Supreme Court, U.S.
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CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

Peter E. Hendrickson and Doreen M. Hendrickson, Petitioners

v.

United States, Respondent

On Petition for Writ of Certiorari to the United States Court Of Appeals for the Sixth Circuit

Petition for Writ of Certiorari

Petitioners Peter E. Hendrickson and Doreen M. Hendrickson
232 Oriole Road,
Commerce Twp., Michigan, 48382
248-366-6858
Proceeding Pro Se

QUESTIONS FOR REVIEW

1. Does a court, or any agency of the government, possess the lawful authority to compel an American man or woman to declare to be true and correct to the best of his or her own knowledge and belief, over his or her own signature, particular words and other explicit testimony dictated and/or specified by the court or government agency, and which he or she does not, in fact believe to be true and correct;
2. Does a court, or any agency of the government, possess the lawful authority to compel an American man or woman to stand silent in the face of testimony made by others which is about, or which affects, him or her, or to compel an American man or woman to adopt such testimony made by others as his or her own, when that American man or woman believes that testimony made by others to be erroneous or false;
3. Can the federal courts grant summary judgment to the United States on its own motion in a suit which it has brought seeking to assert a claim to the property of an American man or woman by unilaterally construing all material-fact-related assertions of the movant United States to be true, and by disregarding or construing to be false all of the contradictory assertions of the non-movant American man or woman;
4. Can the federal courts issue federal tax-related injunctions despite the provisions of the Declaratory Act, permit litigation barred by the doctrine of *res judicata* and collateral estoppel as enunciated in Rule 41 of the Federal Rules of Civil Procedure, and sanction an American man or woman for appealing judicial decisions purporting to do all of the above.

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The opinion of the Circuit Court is "not recommended for publication" (Case No. 07-1510). (The government subsequently moved the court to publish the opinion and the court refused to do so.) The District Court case is designated as Case No. 2:06-CV-11753, ED Mich. (2007). Both opinions and the Circuit Court denial of *en banc* rehearing are reproduced in full in the appendix to this petition.

STATEMENT OF JURISDICTION

This Court has jurisdiction under Article III of the Constitution of the United States of America as the Court of appellate jurisdiction of all controversies to which the United States is a party. Judgments for review were entered by District Court on May 2, 2007 and by a panel of the Sixth Circuit Court of Appeals on June 11, 2008. Petition for *En Banc* Rehearing by the Circuit Court was denied on December 16, 2008

PROVISIONS OF LAW INVOLVED IN THIS CASE

Article 1, Section 9 and the First, Fifth and Seventh Articles of Amendment to the Unites States Constitution; Rules 12 and 41 of the Federal Rules of Civil Procedure; the statutes codified at 26 USC §6201, 26 USC §6402, 26 USC §7405 and 28 USC §2201; and the regulations found at 26 CFR §301.6203-1 and 26 CFR §301.6402-3 are either set forth in the body of the petition, or will be found in the appendix.

STATEMENT OF THE CASE

On April 12, 2006, the Plaintiff "United States" ("U.S.") brought suit against Petitioners (we, us)

alleging that refunds it had made to us of moneys withheld from us and deposited in escrow against the possibility that we would prove liable for "income taxes" during 2002 and 2003 were "erroneous refunds of tax" under the provisions of 26 USC §7405(b), despite there being no evidence of any liability for any tax ever having been determined for these years. Indeed, the United States Treasury Department Certificates of Assessment current at the time of suit indicate that assessment is complete, and that no tax is or ever was, owing for those years.

The relief sought by the "U.S." in its suit is that we be compelled by the federal courts to testify on tax return forms to the receipt of "wages" and "non-employee compensation" in amounts specified by the "U.S." such as to establish a tax liability for these years (and that the courts declare us to then be liable accordingly); the "U.S." further seeks injunctions compelling us to submit to its dictates as to the content of future returns that we might file. We promptly filed motions to dismiss on jurisdictional and other grounds, including the inability of the court to lawfully grant the relief sought and the inability of the court to entertain a suit under 7405(b) when the amounts refunded were not, in fact, amounts of "tax" and had not, in fact, been refunded erroneously.

The District Court sat on the case for nearly a year, during which time a magistrate assigned pre-trial responsibilities accepted a "U.S." motion for summary judgment. We responded to that motion--under protest of its untimeliness due to our still-pending motions-- with definitive competent evidence of issues of material fact categorically rebutting every contention upon which the "U.S." has based its complaint. The "U.S.", on the other hand, produced

nothing more than the testimony of a single affiant--whose testimony serves merely to verify that copies of two documents which the "U.S." purports to be relevant to the suit, and which were created by yet another, thus-far never heard-from party, are true copies-- as its sole evidence in support of its own complaint. This single piece of irrelevant hear-say testimony remains the sole "evidence" produced by the "U.S." to date.

Nonetheless, the magistrate recommended the granting of the motion for summary judgment, the granting of the injunctive relief sought by the "U.S." and the denial of our still-pending motions. On February 26, 2007, within less than one business day of receiving our in-depth objections to the magistrate's recommendations, the District Court adopted them all.

We filed timely motions for reconsideration (including for an opportunity to actually answer the complaint, now that our motions to dismiss had at last been ruled upon), for a jury trial, and for relief from judgment, to which the District Court responded with final rulings on May 2, 2007, again granting the "U.S." the relief it sought (including a motion to amend its previous judgment) and denying all our motions, based upon a lengthy "finding of facts" which amounts to the simple adoption-as-true of everything asserted by the "U.S." in its complaint, motions and briefs. We timely appealed to the Sixth Circuit Court.

A year later, after being briefed, but also after excluding two memoranda of law we filed (on motion by the "U.S." that they exceeded filing page limits), and having refused to allow oral arguments, the three-judge panel of the Appellate Court affirmed the

District Court in a short, "not for publication" opinion laden with *ad hominem* attacks against us, and imposing a $4,000.00 sanction upon us for having made our appeal. The "U.S." moved the court to publish its opinion; the court refused. We timely petitioned the Circuit Court for *en banc* re-hearing, which was denied without comment on December 16, 2008.

Plainly, this case concerns matters of exceptional importance. Just to name one: the orders of the courts below in this case serve to coerce Petitioners (hereafter "we" or "us") into testifying to the Plaintiff's specifications as to content on sworn affidavits (and to the Plaintiff's financial benefit, as well). That is, the orders of the courts below are not simply that we testify, or that we testify concerning some specified matter. INSTEAD, THE ORDERS DICTATE THE VERY WORDS OF OUR TESTIMONY, AND COMMAND US TO DECLARE THAT WE BELIEVE THOSE DICTATED WORDS TO BE TRUE, OVER OUR OWN SIGNATURES!

These orders are not only unprecedented in the judicial history of the USA and repugnant to every principle of proper law, but are manifestly defiant of the First and Fifth Amendments to the U.S. Constitution. Indeed, the orders of the courts below in this respect alone are subversive of the entire concept of rule of law.

Further, the rulings issued in this case conflict directly with the provisions of the Declaratory Act, as ruled upon by this Honorable Court in *Bob Jones Univ. v. Simon,* 416 U.S. 725 (1974); the principles on which summary judgment rulings operate, as ruled

upon by this Honorable Court in *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); and the doctrine of *res judicata* laid out in FRCP 41. These rulings also directly conflict with the proper application of 26 USC §7405(b) in light of the rulings by this Honorable Court in *Rosenman v. United States*, 323 US 658 (1945), and those of virtually all of the Circuit Courts, including (but not limited to) *Moran v. United States*, 63 F.3d 663, 666-667, 7th Circuit (1995), *Plankinton v. United States*, 267 F.2d 278 (7th Cir. 1959), *United States v. Dubuque Packing Co.*, 233 F.2d 453 (8th Cir. 1956) *Thomas v. Mercantile Nat'l Bank at Dallas*, 204 F.2d 943 (5th Cir. 1953) and *Ameel v. United States*, 426 F.2d 1270 (6th Cir. 1970). Indeed, these rulings do violence to so vast a swath of well-settled law that our briefs in this case provided occasion to include more than 140 citations to rulings directly supporting our positions from virtually every federal court in the country, and more than 70 citations of relevant statutes, regulations and other authorities.

What's more, the rulings by the courts below issued despite the fact that the precise "controversy" alleged by the "U.S." has already long since been concluded *in its proper venue*. Years ago, after very exacting scrutiny by executive agencies of the "U.S." over many month's time of all the relevant evidence--including all the evidence alluded to by the "U.S." throughout the proceedings in this case, the "U.S." recognized and formally acknowledged that it had--and has-- no basis in law or in fact by which to assert that we are beholden to it in any way. The "U.S." then acted accordingly, returning property belonging to us which it had been holding in escrow against the possibility that we might have proven to have become

beholden to it.

Nothing new as to the relevant facts or law has arisen, been cited or even been alleged by the "U.S." since then. The "U.S." simply wishes now to evade the constraints of law to which it had previously been obedient. It has asked the judiciary to be its co-conspirator in this endeavor, and to create "facts" unsupported by evidence in order to give the "U.S." its way.

The reason for this pernicious assault on the rule of law is that while nothing new has arisen creating a legitimate complaint of the "U.S." as to our actually owing it any duty or any money, Petitioner Peter Hendrickson has written a book on the subject of the "income tax" which the "U.S." has been trying repeatedly to suppress for more than five years now. The "U.S." has failed in three previous legal assaults on Hendrickson and his book for allegedly "promoting an abusive tax shelter", and now seeks to attack the book by having the courts compel Hendrickson to repudiate its contents by filing tax returns contrary to his own beliefs as to what is true and correct in regard to those returns.

REASONS THIS PETITION SHOULD BE GRANTED

A. The courts below have abused their discretion in the award of summary judgment to the government, and have thereby also committed an assault on the Seventh Article of Amendment to the United States Constitution.

The District Court granted the "U.S.'s" motion

for a summary judgment in this case by making "findings of fact" which elevate all of the (hear-say) allegations presented by the "U.S." to gospel and disregard entirely our sworn testimony to the contrary-- despite having no independent knowledge of these matters whatsoever, and alluding to none. The court then declares that, lo and behold! no genuine issue of fact exists and (based on the same "found facts") summary judgment for the "U.S." is appropriate! This is highly convenient to the "U.S.", of course, but flatly violates the well-established doctrine regarding such motions:

> *"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. Adickes, 398 U.S., at 158 - 159"*

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

> *"[I]n ruling on a motion for summary judgment, the nonmoving party's evidence "is to be believed, and all justifiable inferences are to be drawn in [that party's] favor." Anderson , supra, at 255"*

Hunt v. Cromartie, 526 U.S. 541 (1999)

It also flatly violates the admirable and accurate position well-expressed in *Beaty v. United States*, 937 F.2d 288 (6th Cir. 1991):

> *"A central tenet of our republic--a characteristic that separates us from totalitarian regimes*

throughout the world--is that the government and private citizens resolve disputes on an equal playing field in the courts. When citizens face the government in the federal courts, the job of the judge is to apply the law, not to bolster the government's case."

Frankly, it is just this sort of contrivance that the rules concerning summary judgment are designed to prevent, and that the 7th Amendment to the U.S. Constitution makes illegal by providing that the right of trial by jury shall be preserved. If permitted to favor one side in this fashion, any court could keep any case-- the outcome of which it wished to control-- from reaching a jury by making convenient "findings of fact" favoring one side, just as has been done by the District Court in this case. Nonetheless, when allegedly considering the matter *de novo* on appeal, the panel of the Circuit Court simply repeats the District Court's bad behavior.

Perhaps the Appellate Court's error results from confusion as to both who was the moving party in this case and as to the rules regarding summary judgment. Discussing those rules in its opinion, it says, *"Thereafter, the nonmoving party must present significant probative evidence in support of the complaint to defeat the motion. The nonmoving party is required to show more than a metaphysical doubt as to the existence of a genuine issue of material fact."* (Citations omitted.) However, the "non-moving party" in this case were the defendants, who obviously do NOT need to *"present significant probative evidence in support of the complaint to defeat the motion"*; more significantly, the "non-moving party" is NEVER *"required to show more*

than a metaphysical doubt as to the existence of a genuine issue of material fact" On the precise contrary, it is the MOVANT that must attempt to raise doubts as to the existence of an issue of material fact; the non-movant need merely show that there IS an issue of material fact in controversy.

In this case, a third party has alleged that "Event A" occurred, on the basis of which alleged event the "U.S." argues that we are indebted to it. We have testified-- both long before this case began and directly in response to the motion for summary judgment-- that "Event A" did not occur. There can be no plainer "issue of material fact."

Neither the District Court nor the Circuit Court have any first-hand knowledge whatever as to the occurrence of "Event A", and thus have no basis upon which to make "findings of fact", even if such findings were not the proper province of a jury in any case. Yet both courts presume to make such findings.

The courts below thus abuse their discretion and, without regard to the fact that the only proper disposition of this case is dismissal, do violence to the spirit of the 7th Amendment as well. The appellate Court compounds the abuse and that violence by punishing us with sanctions for invoking its supervisory authority over the District Court! This Honorable Court has plainly declared, *"The evidence of the nonmovant is to be believed." Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). We appealed a District Court ruling based on the straightforward meaning of this declaration, among other things, and the Appellate Court declares our appeal to be "frivolous" and punishes us with sanctions! We appeal

to this Honorable Court for its protection from this abuse.

We feel obliged to observe that in addition to sharing the Circuit Court's "confusion" about the rules concerning summary judgment, the District Court exhibited considerable "confusion" about matters of concrete fact throughout its Final Rulings. For example, in those rulings the court deliberately quotes one line of Peter Hendrickson's book, 'Cracking the Code- The Fascinating Truth About Taxation In America' out of context so as to suggest that the book argues that income tax-related withholding only applies to federal workers. The book does contain that one line, but makes no such argument. Income tax-related withholding in other cases is discussed in depth in the book.

Similarly, the District Court refers to *"the false and frivolous claims set forth in Cracking the Code that only federal, state or local government workers are liable for the payment of federal income tax"*; and *"the assertion that wages do not constitute income for federal tax purposes"*. No such claims are made in the book; in fact, the book specifically says otherwise in great detail.

Most egregiously, perhaps, the District Court makes the following declaration in its final ruling:

> *"The only new argument is that "the statutes invoked or relied upon by Plaintiff and the Court . . . are unconstitutional, being plainly violative of at least the 'necessary and proper' clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution." (Defs.' Mot. for Reconsideration*

at 9.)"

What we actually said in the referenced motion is:

> *4. Regarding Plaintiff's requests for an injunction and coerced testimony and the Court's related decisions, it is self-evident that to dictate what cannot be said is to dictate what must be said, or to impose silence. It is not necessary to discuss Plaintiff's calculated mischaracterizations of what is said in Defendant Peter Hendrickson's book or Plaintiff's pretensions in suggesting that it possesses some mystic knowledge about the underlying meaning of our tax return testimony in order to observe that neither Plaintiff, nor anyone else on Earth, has the lawful authority to dictate the content of our testimony, or to impose silence, in the face of allegations concerning us, such as those on the "information returns" made so much of by Plaintiff in this case.*
>
> *To whatever degree the statutes invoked or relied upon by Plaintiff and the Court can be construed to provide for such an injunction and coercion of testimony, those statutes are unconstitutional, being plainly violative of at least the "necessary and proper" clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution. Such efforts to dictate or control testimony also violate various federal criminal statutes regarding witness tampering and intimidation, as well as the fundamental principles of due process.*

> *The very fact that Plaintiff has sought such an injunction, and a coerced change in testimony we have already made, is a plain acknowledgment that Plaintiff has no legal basis for disputing the freely-made testimony on our returns. The same plain truth is revealed by Plaintiff's inability to carry its burden of proof throughout this contest, and its failure to even try to do so. Plaintiff CANNOT substantiate the allegations made on the "information returns" upon which it relies, and therefore seeks to prevent those allegations from being rebutted.*

It is not for us to say whether these mis-statements and contrivances are calculated to plant false notions about our arguments and positions in the minds of those who read only the rulings by the court and not the actual materials we filed in the proceedings below, and to suggest that we are "tax protestors". However, if left unaddressed, these mis-statements will leave such false notions. Therefore, we bring them to this Honorable Court's attention here.

B. In ordering us to testify under oath using government-dictated words, the courts below directly violate the First and Fifth Amendments to the United States Constitution and the fundamental principles of due process, and do so in an effort to evade the provisions of Article 1, Section 9, as well as the Seventh Amendment.

The injunctive "relief" sought by the "U.S.", granted by the District Court and affirmed by the

Appellate Court seeks to deny us our absolute right to challenge and rebut testimony by others which is about us and directly affects us; and to deny us our right to testify on our own behalf. It is grossly unconstitutional-- indeed, it is so offensive to civilized sensibilities generally as to defy description.

In particular, the injunctions issued by the District Court and affirmed by the Circuit Court assault our right to freedom of speech (which includes a freedom FROM speaking generally), and our right to not be compelled to be witnesses against ourselves, recognized by the First and Fifth Articles of Amendment to the U.S. Constitution. In regard to the Fifth Amendment, it is obvious that if we are made to testify contrary to our testimony already made, such a contrivance would have the effect of forcing us into a declaration of having perjured ourselves in our original testimony.

The injunctions also offend against the Seventh Amendment, because if obeyed, the "U.S." would be improperly spared the necessity of actually proving its alleged claims against us in a proper proceeding before a jury, as is provided for by that amendment. (This notwithstanding the fact that the "U.S.'s" complaint has never been supported by any competent witness throughout the proceedings in this case, and therefore it has failed to make even a *prima facie* claim-- meaning that the only proper disposition of this case is dismissal).

This injunctive "relief" would be pernicious and lawless no matter the circumstances in which it was sought, but it is particularly so when deployed in the instant case, because its ultimate effect would be to facilitate the government's evasion of the

provisions of Article 1, Section 9 of the U.S. Constitution. However much the "U.S.", the District Court and the Circuit Court have endeavored to obscure, evade or ignore it, it is a fact that there is no Constitutionally-valid unapportioned federal tax on the general, undistinguished revenue or economic activity of American citizens (or anyone else). This is evident upon careful study of the revenue statutes, a multitude of rulings by this Honorable Court, and other authorities. A tax on general, undistinguished revenue or economic activity is a capitation:

> *"...Albert Gallatin, in his Sketch of the Finances of the United States, published in November, 1796, said: 'The most generally received opinion, however, is that, by direct taxes in the constitution, those are meant which are raised on the capital or revenue of the people;...'*
>
> ...
>
> *He then quotes from Smith's Wealth of Nations, and continues: 'The remarkable coincidence of the clause of the constitution with this passage in using the word 'capitation' as a generic expression, including the different species of direct taxes-- an acceptation of the word peculiar, it is believed, to Dr. Smith-- leaves little doubt that the framers of the one had the other in view at the time, and that they, as well as he, by direct taxes, meant those paid directly from the falling immediately on the revenue;...'"*

Pollock v. Farmer's Loan & Trust, 157 U.S. 429 (1895)

(Smith actually puts the matter more pointedly: *"The taxes which, it is intended, should fall indifferently upon every different species of revenue, are capitation taxes,"* ('The Wealth of Nations', Ch. 4).) Such a tax

must be apportioned per Article 1, Section 9 of the U.S. Constitution: *"No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken."*

Thus, an unapportioned tax on revenue or economic activity such as the income tax can only be a tax on specialized, distinguishable revenue or economic activity. This has always been true, and remains true to this day. As this Honorable Court observes in ruling on the effect of the 16th Amendment in *Brushaber v. Union Pacific R. Co.*, (240 U.S. 1 (1916)), the amendment has no effect on the provisions of Article 1, Section 9, but merely undoes the loophole perceived by the *Pollock* court in 1895 by means of which certain specialized revenue or economic activity was relieved of the tax because of additional specialized characteristics which the *Pollock* court concluded would make the tax functionally direct in those particular applications. The 16th Amendment overruled the *Pollock* court, and provides that what the *Pollock* court had excluded from the tax, but which otherwise qualified as "income" under the (by then) 50-year-old income tax is taxable without apportionment. (See *South Carolina v. Baker,* 485 U.S. 505, (1988).)

The *Brushaber* court goes on to observe that this is the only effect of the amendment-- it does not extend the tax to anything which had been untaxable without apportionment prior to the amendment's adoption, but merely undoes the *Pollock* court's extension of the apportionment requirement to the tax when applied to gains derived from personal property sources such as stock or real estate. (See *South Carolina v. Baker,* 485 U.S. 505, (1988);

Stanton v. Baltic Mining Co., 240 U.S. 103 (1916); *Peck v. Lowe*, 247 U.S. 165 (1918).) Indeed, the *Brushaber* court specifically cautions against misunderstanding arising on this point, declaring that should the tax ever come to be applied more promiscuously by any means:

> *"the duty would arise to disregard form* [that is, any pretense by which it is made to appear that the tax is being confined to its proper limits when it is not, such as by creatively construing the meaning of "income", or the use of any pretense, scheme or construction by which non-specialized revenue or activities are made to appear otherwise so as to be subjected to the tax] *and consider substance alone* [that is, what the tax is actually falling upon as a practical reality], *and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it."*

Whether revenue or economic activity of any kind has been received or engaged in; and, if so, whether such revenue or activity was of a taxable character; is established in whole or in part by testimony. See *Bothke v. Terry*, 713 F. 2d 1405, at 1414 (1983). Parties who have received revenue of a specialized taxable character or engaged in activities of a taxable character are compelled by law to testify about them. Those about whose receipts "information returns" (such as Forms W-2 or 1099) have been prepared are compelled as a practical matter to testify in response, or suffer financial harm, or worse--regardless of the accuracy of those "information returns." That such parties have an absolute right to so testify is beyond rational question or dispute. (See

Garner v. United States, 424 U.S. 648 (1976); *Heiner v. Donnan,* 285 U.S. 312 (1932); *Vlandis v. Kline,* 412 U.S. 441 (1973); *Armstrong v. Manzo,* 380 U.S. 545 (1965); *Escobedo v. Illinois,* 378 U.S. 478 (1964); *Joint Anti-Fascist Comm. v. McGrath,* 341 U.S. 123 (1951).)

The instant case is an exact expression of this legal principle. We received no specialized revenue, nor engaged in any specialized activity of a sort taxable without apportionment during the years involved in this case. We are, nonetheless, compelled to testify to this effect by way of a return and associated documents, because if we do not, the contrary and erroneous assertions made on "information returns" will be taken as true by default, causing us to face possible criminal sanctions for "failure to file," and causing erroneous presumptions of governmental claims to ownership of some of our property to arise.

Indeed, the ONLY legal remedy available to us to overcome the legal "presumption of correctness" of such "information returns" filed about us is the rebuttal of those allegations by way of our own testimony as to our own knowledge, information and belief. For this reason, and in light of the Constitutional limitations on federal taxing authority and our Constitutionally-protected rights involving speech and due process, **we cannot lawfully be enjoined from saying we received no specialized revenue and engaged in no specialized economic activity, sanctioned for having said so, ordered to say anything to the contrary, or prevented from saying the same in the future.**

This is a simple core matter of due process.

Regardless of context or any other consideration, no American can lawfully be prevented from testifying in his or her own behalf, be sanctioned for having done so, or be ordered to testify contrary to his or her own beliefs as to what is true about the matter at issue.

C. In seeking to compel our adoption of the government's words on our tax returns, the "U.S." and the courts below are in violation of the statutes codified at 26 USC §6201, 26 USC §6402, and the regulations found at 26 CFR §301.6203-1 and 26 CFR §301.6402-3.

However much the "U.S.", the District Court and the Circuit Court have endeavored to obscure, evade or ignore them, federal statutes explicitly provide for our un-coerced testimony as to these matters, and require the federal government to accept that testimony as true and dispositive as to whether, and to what degree, we are or are not beholden to it (see §93 of the R.A. of 1862; R.S. §3173 as amended; §3615 of the 1939 IRC; 26 USC §6201; 26 USC §6402; 26 USC §6020(b); 26 CFR §301.6402-3; 26 CFR §301.6203-1; IRM §5.1.11.6.8). The only lawful government involvement in the preparation or content of returns such as ours is at the voluntary election of the filer (see the authorities cited above, as well as 26 USC §6020(a) and 26 USC §6014(a)).

We have invoked the plain and clear language of these statutes, current IRC sections and current CFR sections repeatedly throughout our filings in this case. The "U.S." has neither disputed nor denied the requirements thus imposed upon it; nor have the courts. Indeed, the "U.S." properly obeyed these requirements in its initial response to our filings years

ago. (See Treasury Dept. Certificates of Assessment in the Appendix.) Nonetheless, the "U.S." now seeks to evade these requirements, with the help of the courts. We believe that ignoring these laws is not within the discretion of either.

When all the creative clutter and distracting rhetoric and references deployed in this case by both the "U.S." and the courts are pushed aside, a stark and disgraceful reality meets the eye. Unheard-from "information return" preparers are being judicially elevated into incontrovertible witnesses-- in defiance of the law and to our great harm (but to the distinct benefit of the federal government). Simultaneously, we are gagged as to our own testimony and have the words of others forced into our mouths-- words which we are commanded to swear to be true to the best of our knowledge and belief! Piling on the injury and injustice, the Circuit Court has sanctioned us for objecting to these pernicious, lawless outrages!

Frankly, the fact that our legal arguments are explicitly supported by scores of Supreme and lower court rulings, as well as the entire body of relevant statutes and regulations, the Congressional and historical records, and every other possible authority-- all exhaustively presented in our briefs in the proceedings below-- needn't even be mentioned to decisively rebut the grotesque characterization of our appeal by the Circuit Court panel as "frivolous" and appropriate for punishment. The manifest lawlessness-- indeed, the anti-lawfulness-- of the ruling upheld by that panel more than suffices by itself, simply upon being plainly stated.

The sole purpose of these outrages is to evade the testimony already made on our returns and the obligation imposed by law upon the "U.S." to accept

those returns as filed and to return any of our property held in escrow against the possibility that those returns should establish that we are beholden to the "U.S."

> *"And be it further enacted,...that any party, in his or her own behalf,...shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ...the amount of his or her annual income,... liable to be assessed,... and the same so declared* ***shall be received as the sum upon which duties are to be assessed and collected."***

Section 93 of The Revenue Act of 1862 (Emphasis added)

26 CFR §301.6203-1 Method of assessment.
"The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, be the amount so shown..."

> Senator Clark: "*Of course, you withhold not only from taxpayers but nontaxpayers.*"
> Mr. Hardy: "*Yes.*"
> ...
> Senator Danaher: "*I have only one other thought on that point. In the event of withholding from the owner of stock and no taxes due ultimately, where does he get his refund?*"
> Mr. Friedman: "*You're thinking of a corporation or an individual?*"
> Senator Danaher: "*I am talking about an individual.*"
> Mr. Friedman: "*An individual will file an*

> *income tax return, and that income tax return will constitute an automatic claim for refund."*

From a hearing on withholding provisions of the 1942 Revenue Act before a subcommittee of Committee on Finance, US Senate, during the 77th Congress, Second Session, August 21, 22, 1942, pp. 104 and 141. Missouri Senator Bennett Clark, Connecticut Senator John A. Danaher and testifying witnesses Charles O. Hardy, Brookings Institution, and Milton Friedman, Treasury Department Division of Tax Research.

> "[Withheld or paid-in amounts] *are, as it were, payments in escrow. They are set aside, as we have noted, in special suspense accounts established for depositing money received when no assessment is then outstanding against the taxpayer. The receipt by the Government of moneys under such an arrangement carries no more significance than would the giving of a surety bond. Money in these accounts is held not as taxes duly collected are held but as a deposit..."*

Rosenman v. United States, 323 US 658 (1945)

D. The courts below have issued and affirmed rulings in this case despite the United States being barred from litigating this case under the provisions of Rule 41 of the Federal Rules Of Civil Procedure.

Although we clearly invoked the doctrine of *res judicata* as prescribed in FRCP 41 to the Appellate Court, it has waved away this jurisdictional infirmity with the inapposite declaration that the government

can't be prohibited from "suggesting that Peter. E. Hendrickson's book promotes false or fraudulent tax schemes..." The Appellate Court appears to have misunderstood our point.

We never proposed to the court that anyone could be prevented from "suggesting" anything in bringing this jurisdictional issue to the court's attention. Rather, we observed that in moving three different courts to dismiss its own previous complaints involving Petitioner Peter Hendrickson and his book, 'Cracking the Code- The Fascinating Truth About Taxation In America', in which the "U.S." had attempted to broadly challenge the content of the book, and to characterize it (and Hendrickson) as "promoting false or fraudulent tax schemes", the "U.S." has conceded that the book does ***not***, in fact, contain, argue or promote false or fraudulent tax schemes (see *United States v. Peter Hendrickson,* Case No. 04-73591 (E.D. Mich. 2004), *Peter Hendrickson v. United States,* 04-00177 (N.D. Cal 2004), and *United States v. Peter Hendrickson,* 04-72323 (E.D. Mich. 2004)).

Nonetheless, the book was deliberately and specifically characterized as doing so as an integral element of the complaint in this case, and cited to the same effect by the District Court as a basis for its ruling, despite the "U.S." having already conceded in the above-mentioned cases that the book DOES NOT, in fact, promote any "false or fraudulent tax scheme". Thus, the "U.S."' complaint is brought in bad faith and is conclusively barred by *res judicata*, or collateral estoppel, or both, pursuant to Fed. R. Civ. Proc. 41:

> Federal Rules Of Civil Procedure, Rule 41. Dismissal of Actions:
> *(a) Voluntary Dismissal: Effect Thereof.*

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without order of court

(ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

E. The Appellate Court abused its discretion by penalizing us with sanctions for allegedly making a "frivolous" appeal despite our arguments having already been established to be well-founded (and being exhaustively supported by rulings of this Honorable Court and scores of other authorities).

As noted in 'D.' above, the issue of the soundness of Petitioners' arguments in general has already been repeatedly conceded by the "U.S." Those conceded positions informed much of the argument made in our filings in the District Court and in our appeal. Thus, it is clear that even the Plaintiff in this case has agreed that what the Appellate Court purports to complain of, and punish us for, is perfectly legitimate, solidly based in the law, and explicitly NOT "frivolous."

Furthermore, our arguments in this case rest

on the plain words of more than 70 Constitutional provisions, relevant statutes, regulations and other authorities clearly cited and extensively quoted in our briefs. They are directly supported by more than 140 rulings from virtually every federal circuit and this Honorable Court, also cited and quoted in our filings.

Since even if our appeal-of-right of the District Court's summary judgment COULD be sanctioned under any circumstances (and we do not accept that this is so), it certainly cannot be if even one single thing we argue is sound, or is supported by an existing authority. In light of those arguments having already prevailed on their merits in the three cases cited in point 'D.' above, and the exhaustive authority with which they are supported in the instant case, (not to mention other points made in this petition) the imposition upon us of punitive monetary sanctions for bringing our appeal is rankly abusive.

F. The courts below have unlawfully assumed the power to declare petitioners to be under a tax-related duty to our adversary, in violation of the Declaratory Act and in a usurpation of the authority reserved to juries as finder of fact.

The Declaratory Act, codified at 28 USC §2201 bars the courts from determining rights and other legal relations with respect to federal taxes, in particular. The courts below have nonetheless made such determinations by way of "findings of facts," (and based on nothing more than unsupported, untested assertions made on certain documents by persons not even party to this action, and which are explicitly and comprehensively rebutted under oath

by the petitioners).

The authority to make such "findings of facts" not only is withheld from the courts by the Declaratory Act, but is properly the province of a jury (notwithstanding the fact that in the absence of these convenient "findings" there is no real case here to put to a jury). Thus, the rulings of the courts below are also violative of the Seventh Amendment to the Constitution, which provides that, *"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved."* The courts below appear to be suggesting that their "findings of fact" establish that the instant case is somehow not a "suit at common law," but this obviously puts the cart before the horse in an effort to evade putting the case before a jury.

Furthermore, the relief sought by the "U.S." and granted by the courts below includes the issuance of injunctions serving to dictate the content of our speech in service to the interests of the "U.S." As this Court has observed, and as the "U.S." itself has acknowledged, injunctions in respect to federal taxes are particularly barred by the Declaratory Act:

> *"In 1935, one year after the enactment of the Declaratory Judgment Act... ...Congress amended that Act to exclude suits "with respect to Federal taxes . . .,"... Some have noted that the federal tax exception to the Declaratory Judgment Act may be more sweeping than the Anti-Injunction Act. ...The [IRS] takes that position in this case, arguing that any suit for an injunction is also an action for a declaratory judgment and thus is barred by the literal terms of the Declaratory Judgment Act,..."*

Bob Jones Univ. v. Simon, 416 U.S. 725 (1974)).

G. The courts below sustained the complaint in this case without jurisdiction, and in direct conflict with well-settled relevant precedent from across the entire spectrum of the federal judiciary.

The "U.S." brought suit citing the authority of 26 USC §7405(b), purportedly seeking to reclaim an "erroneous refund of tax". Plainly, in order for a suit to properly seek to reclaim an "erroneous refund of tax", a "refund of tax" must first have been made. In this case, the "refunds" involved were nothing more than the return of property to its owners upon proper application. See *Rosenman v. United States,* 323 US 658 (1945), *Moran v. United States,* 63 F.3d 663, 666-667, 7th Circuit (1995), *Plankinton v. United States,* 267 F.2d 278 (7th Cir. 1959), *United States v. Dubuque Packing Co.,* 233 F.2d 453 (8th Cir. 1956) *Thomas v. Mercantile Nat'l Bank at Dallas,* 204 F.2d 943 (5th Cir. 1953) and *Ameel v. United States,* 426 F.2d 1270 (6th Cir. 1970), among many, many others.

No liability for any tax had ever been found to be owing in connection with these amounts (or the relevant periods) prior to this suit being brought, and none exists to this day. See the Department of Treasury Certificates of Assessment acknowledging zero liability for us for these years in the appendix. Those certificates (produced in February of 2006) reflect the determination by the "U.S." itself-- made while in possession of every bit of information and evidence produced in support of its "complaint"-- that what was returned was NOT a "refund of tax" (and was not "erroneous", either).

Indeed, somehow the "U.S." neglected to

mention in its complaint and its hundreds of pages of filings in the proceedings in the courts below that not only had its own consideration of the entire evidentiary record led to its agreement that we owed it nothing and never had for the years involved here, but before it returned our property-in-escrow, it made numerous deductions and diversions from those amounts to satisfy what it perceived as balances owed for other years. Clearly its determinations, and its behavior in returning our property, were fully informed, aware and deliberate, rather than being some kind of "computer glitch" or act of naiveté.

Thus, it is clear that even the "U.S." itself understood that it was not seeking a return of an "erroneous refund of tax", and had no lawful authority to bring this suit. Making up with craft what it lacked in integrity and respect for the law, the "U.S." sought to contrive its way around this jurisdictional problem by asking the court to lift itself up by its own bootstraps and confer jurisdiction upon itself to hear this case-- long after already having allowed it to proceed-- by means of its eventual order to us to testify to words specified by the government. Those words would have the effect of establishing a liability and retroactively converting the amounts returned to us into amounts paid as tax, rather than merely amounts held in escrow.

Even leaving aside the idiosyncrasies of 26 USC §7405(b), the suit should not have been sustained simply because there never having been a defined tax liability, there was no claim for the "U.S." to be pursuing by way of ANY protocol. This was made clear in the motions to dismiss we filed immediately in response to the initial "complaint," which should have been promptly granted pursuant to FRCP 12(h)(3).

CONCLUSION

The suit brought by the "U.S.", and the findings, orders and judgments of the courts below are all part of a deliberate, corrosive assault on the core principles of due process and the rule of law, or, if not deliberate, have the effect of such an assault, nonetheless. Every aspect of the progress of this suit from the initial complaint to each step through the courts has involved a distortion or outright violation of one or more well-settled Constitutional, statutory and doctrinal prescriptions and proscriptions.

Any one of these many distortions and violations merits the review of this Honorable Court, and none more so than the central contrivance about which all revolve: the dictation to us of the very words that must appear over our own signatures, and which the "U.S." and the courts below would have us declare to be our own testimony. It is impossible to imagine a more pernicious request to the courts by the government, or a more corrupt command by a court (although the imposition of sanctions upon us for appealing that corrupt command and the many other errors and improprieties of the District Court may be in the running...).

We ask that for these reasons, and the others set forth above, this Honorable Court grant our Petition and afford us appropriate relief.

Respectfully submitted,

Peter Eric Hendrickson

Doreen M. Hendrickson

APPENDIX

Decisions of the Courts below:

Opinions of the District Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,

v.

PETER HENDRICKSON and DOREEN HENDRICKSON, Defendants.
/
Case No. 06-11753
Honorable Nancy G. Edmunds

ORDER DENYING (1) DEFENDANTS' MOTION FOR RELIEF FROM JUDGMENT, [26] AND (2) DEFENDANTS' MOTION FOR RECONSIDERATION [27]

This matter comes before the Court on Defendant Peter Hendrickson's and Defendant Doreen Hendrickson's (collectively, "Defendants") motions for relief from judgment and for reconsideration, both filed on March 13, 2007.[1] On February 26, 2007, this Court accepted in part and rejected in part the magistrate judge's report and recommendation, granted the government's motion for summary judgment, and granted the government's request for a

preliminary injunction. Defendants' motion for relief from judgment is based upon Fed. R. Civ. P. 60(b)(4) and (6), as they argue that this Court lacked subject matter jurisdiction to hear the case. The motion for reconsideration is presumably brought under Rule 7.1(g)(3) of the Local Rules for the Eastern District of Michigan, and Defendants argue that the government has not met its burden of proof regarding the fact that they received erroneous tax refunds for 2002 and 2003.

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[1]If Defendants desire to appeal, they must do so in accordance with the Rules of Appellate Procedure. An appeal from an order of this Court must be taken to the Sixth Circuit Court of Appeals.

Rule 60(b) provides a number of grounds under which a court has the discretion to set aside a judgment, including the two that Defendants cite here: "(4) the judgment is void; . . . or (6) any other reason justifying relief from the operation of the judgment." "A judgment is void under 60(b)(4) 'if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, ...'" Antoine v. Atlas Turner, Inc., 66 F.3d 105, 108 (6th Cir. 1995) (quoting In re Edwards, 962 F.2d 641, 644 (7th Cir. 1992)). Defendants do not argue that this Court lacks personal jurisdiction over them, and nothing in their motion convinces the Court that the magistrate's finding that subject matter jurisdiction exists here was incorrect. Furthermore, a party merely seeking to re-litigate prior issues is not entitled to relief under Rule 60(b). Johnson v. Unknown Dellatifa, 357 F.3d 539, 543 (6th Cir. 2004).

With regards to Rule 60(b)(6), the Sixth Circuit has held that "[r]elief from a judgment pursuant to Rule 60(b)(6) 'is appropriate to accomplish justice in an extraordinary situation . . . .'" Id. (quoting Overbee v. Van Waters & Rogers, 765 F.2d 578, 580 (6th Cir.1985)). Defendants fail to state a sufficient reason to meet this demanding standard, so they are not entitled to relief on this alternative ground under Rule 60(b).

Turning to Defendants' motion for reconsideration, the Court will not grant a motion for reconsideration under Rule 7.1(g)(3) of the Local Rules for the Eastern District of Michigan "that merely present[s] the same issues ruled upon by the court, either expressly or by reasonable implication. The movant must not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case." The majority of Defendants' motion attempts to re-argue the previously rejected assertion that wages do not constitute income for federal tax purposes, and thus, does not meet the requirements of L.R. 7.1(g)(3). The only new argument is that "the statutes invoked or relied upon by Plaintiff and the Court . . . are unconstitutional, being plainly violative of at least the 'necessary and proper' clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution." (Defs.' Mot. for Reconsideration at 9.) This assertion is not supported by any legal authority, however, and the Court declines to address Defendants' position without any indication that there is a legal basis for this newly alleged defense to the government's claims.

Because Defendants' motions for relief from judgment and for reconsideration fail to satisfy the requirements of Fed. R. Civ. P. 60(b) and L.R. 7.1(g)(3), the Court hereby DENIES both motions in their entirety.

SO ORDERED.
s/Nancy G. Edmunds
Nancy G. Edmunds
U. S. District Judge
Dated: May 2, 2007

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff,
-vs.-

PETER ERIC HENDRICKSON and
DOREEN M. HENDRICKSON,
Defendants.
/
Civil Action No. 06-11753
Hon. Nancy G. Edmunds

AMENDED JUDGMENT AND ORDER OF PERMANENT INJUNCTION [23, 24]

Upon consideration of Plaintiff's Motion to Amend Judgment, and any response thereto, good cause appearing, it is hereby

ORDERED, that Plaintiff's Motion to Amend Judgment is GRANTED; and it is ADJUDGED and ORDERED that Defendant Peter Hendrickson and Defendant Doreen Hendrickson, (collectively,

"Defendants") are jointly indebted to Plaintiff for erroneous refunds for the 2002 and 2003 tax years as shown below:

2002 Tax Year

$10,152.96, plus interest accruing on the amounts of the erroneous refunds or credits from April 15, 2003, pursuant to 26 U.S.C. §§ 6602 and 6621(a)(2) until paid.

2003 Tax Year

$7,055.70, plus interest accruing on the amounts of the erroneous refunds or credits from April 15, 2004, pursuant to 26 U.S.C. §§ 6602 and 6621(a)(2) until paid.

$3,172.30, plus interest accruing on the amounts of the erroneous refunds or credits from October 4, 2004, pursuant to 26 U.S.C. §§ 6602 and 6621(a)(2) until paid.

PERMANENT INJUNCTION

In accordance with Rule 65 of the Federal Rules of Civil Procedure, the Court makes the following findings of fact and sets forth the following conclusions of law.

1. Plaintiff commenced this action on April 12, 2006, to recover the federal income tax refunds made to Defendants for the 2002 and 2003 tax years, and to obtain a permanent injunction (1) requiring Defendants to amend their 2002 and 2003 federal income tax returns; and (2) prohibiting Defendants from filing or continuing to file federal income tax returns that falsely claim that they received "zero" or no taxable income.

2. Defendants are residents of Commerce Township, Michigan, within this judicial district, and were properly served with process on April 12, 2006.

3. During 2002 and 2003, Defendant Peter Hendrickson was employed by Personnel Management, Inc., and earned wages of $58,965 and $60,608, respectively, during those years.

2002 tax year

4. As required by law, Defendant Peter Hendrickson's employer withheld federal income taxes ($5,642.20), social security taxes ($3,655.83) and Medicare taxes ($854.93) from his wages in 2002 and paid over those amounts to the IRS. Also, as required by law, Mr. Hendrickson's employer issued him a Form W-2 Wage and Tax Statement that correctly reported his wages and those withholdings.

5. Defendant Doreen Hendrickson received $3,773.00 in non-employee compensation from Una E. Dworkin in 2002. As required by law, Dworkin provided her with a Form 1099 that correctly reported this non-employee compensation.

6. Defendants' 2002 Form 1040 tax return, which was filed with the IRS in August of 2003, falsely reported "zero" wages on line 7. An IRS Form 4852 attached to the return falsely reported that Defendant Peter Hendrickson received no wages during 2002. The Form 4852 did report that federal income taxes ($5,642.20), social security ($3,655.83) and Medicare taxes ($854.93) totaling $10,152.96 had been withheld from his wages during 2002.

7. Defendant Peter Hendrickson also claimed on his Form 4852 that he had asked his employer to "issue forms correctly listing payments of 'wages as

defined in [sections] 3401(a) and 3121(a),' but that his company had refused for 'fear of IRS retaliation.'"

8. Defendants requested, on line 70 of their joint 2002 tax return, a refund of the $10,152.96 in federal income, social security, and Medicare taxes that had been withheld from Defendant Peter Hendrickson's wages during 2002.

9. Because Defendants reported that they had no income, the IRS, unaware that Defendants' report was false, treated the withheld federal taxes as a tax overpayments and applied them on April 15, 2003 to (1) Defendant Doreen Hendrickson's unpaid 2000 tax liability ($1,699.86); and (2) the outstanding tax balances owed by Defendant Peter Hendrickson for 2001 ($6,521.11) and 2000 ($1,931.99).

10. The refunds or credits described above were erroneous within the meaning of IRC § 7405(b). Defendants were not entitled to refunds of federal income taxes for 2002 because their federal income tax liability for that year – $6,327.00 – exceeded the amount of the federal income taxes withheld from Defendant Peter Hendrickson's wages by his employer ($5,642.20), which constituted the only tax payments made by Defendants in 2002. Furthermore, Defendants were not entitled to a refund, under any circumstances, of the social security and Medicare taxes that had been withheld from Defendant Peter Hendrickson's wages during 2002.

2003 tax year

11. As required by law, Defendant Peter Hendrickson's employer withheld federal income taxes ($5,620.02), social security taxes ($3,757.60) and Medicare taxes ($878.72) from his wages in 2003 and paid over those amounts to the IRS. Also, as required

by law, Mr. Hendrickson's employer issued him a Form W-2 Wage and Tax Statement that correctly reported his wages and those withholdings.

12. Defendant Doreen Hendrickson received $3,188.00 in non-employee compensation from Una E. Dworkin in 2003. As required by law, Dworkin provided her with a Form 1099 that correctly reported this non-employee compensation.

13. Defendants' 2003 Form 1040 tax return falsely reported "zero" wages on line 7. An IRS Form 4852 attached to the return reported that Defendant Peter Hendrickson received no wages during 2003. The Form 4852 did report that federal income taxes ($5,620.02), social security ($3,757.60) and Medicare taxes ($878.72) totaling $10,256.34 had been withheld from his wages during 2003.

14. Defendant Peter Hendrickson also claimed on his Form 4852 that he had asked his employer to "issue forms correctly listing payments of 'wages as defined in [sections] 3401(a) and 3121(a),' but that his company had refused for 'fear of IRS retaliation.'"

15. Defendants requested, on their joint 2003 tax return, a refund of the $10,228.00 in federal income, social security, and Medicare taxes that had been withheld from Defendant Peter Hendrickson's wages during 2003.

16. Because Defendants reported that they had no income, the IRS, unaware that Defendant's report was false, treated the withheld federal taxes as tax overpayments and applied them on April 15, 2004 to (1) Defendant Peter Hendrickson's unpaid 2000 tax liability ($5,551.44); and (2) three frivolous return penalties that had been assessed against Defendants under IRC § 6702 ($515.66, $553.17 and $529.18). The

IRS also sent a refund check sent to Defendants on October 10, 2004 in the amount of $3,172.30.

17. The refunds or credits described above were erroneous within the meaning of IRC § 7405(b). Defendants were not entitled to refunds of federal income taxes for 2003 because their federal income tax liability for that year – $6,061.00 – exceeded the amount of the federal income taxes withheld from Defendant Peter Hendrickson's wages by his employer ($5,620.02), which constituted the only tax payments made by Defendants in 2003. Furthermore, Defendants were not entitled to a refund, under any circumstances, of the social security and Medicare taxes that had been withheld from Defendant Peter Hendrickson's wages during 2003.

18. Defendants contend that their Forms 4852, as described above, accurately reported that they received no wages or other compensation in 2002 and 2003. Defendants base their contention on theories contained in a book entitled Cracking the Code, which was written by Defendant Peter Hendrickson. On page 76 of Cracking the Code ("CtC"), Defendant Peter Hendrickson, states "So, actually, withholding only applies to the pay of federal government workers, exactly as it always has (plus 'State' government workers, since 1939, and those of the District of Columbia since 1921)."

19. Defendants' contention that withholding applies only to government workers is frivolous and false. See, e.g., Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986); United States v. Latham, 754 F.2d 747, 750 (7th Cir. 1985); (contention that "under 26 U.S.C. § 3401(c) the category of 'employee' does not include privately employed wage earners is a preposterous reading of the statute."); O'Connor v.

United States, 669 F. Supp. 317, 322 (D. Nev. 1987). Defendant Peter Hendrickson was an employee of Personnel Management, Inc. in 2002 and 2003 within the meaning of IRC § 3401(c). Defendant Peter Hendrickson's employer properly withheld federal income and employment taxes from his wages.

20. In addition to the monetary loss occasioned by the erroneous tax refunds that the IRS made to or on behalf of Defendants, their conduct in filing false tax returns caused substantial interference with the internal revenue laws by administratively burdening the IRS, requiring the agency to expend considerable resources to detect the erroneous refunds, examine Defendants' 2002 and 2003 Form 1040 tax returns, and obtain the documents necessary to prove that the refunds were erroneous.

21. In order to qualify for injunctive relief under Rule 65 of the Federal Rules of Civil Procedure, Plaintiff must establish (1) the likelihood of the government's success on merits; (2) whether the injunction will save Plaintiff from irreparable injury; (3) whether the injunction would harm others; and (4) whether the public interest would be served by the injunction. See Southern Milk Sales, Inc. v. Martin, 924 F.2d 98, 103 n.3 (6th Cir. 1991); In re DeLorean Motor Co., 755 F.2d 1223, 1228 (6th Cir. 1985).

22. Plaintiff has prevailed on the merits of its erroneous refund claims against Defendants as reflected in the prior order adopting in part and rejecting in part the Magistrate Judge's Report and Recommendation with respect to Plaintiff's motion for summary judgment.

23. Defendants' actions impose an immediate and irreparable injury on Plaintiff by impeding, impairing and obstructing the assessment and

collection of federal taxes in accordance with the internal revenue laws.

24. In the absence of an injunction, Plaintiff will continue to suffer irreparable injury as Defendants and those who imitate them continue to file false tax returns. Since Plaintiff has met all of the proper standards and the traditional equity criteria for the entry of a permanent injunction under IRC § 7402(a), a permanent injunction should issue.

25. Defendants will not be harmed by the entry of an injunction against them because they will only be required to obey the law, including the provisions of the Internal Revenue Code and the applicable Treasury Regulations.

26. Finally, the United States' system of taxation relies on self-assessment and the good faith and integrity of taxpayers to disclose completely and honestly all information relevant to their tax liability. The public interest will be accordingly be served by requiring Defendants to correctly report the income that they receive on their federal tax returns.

27. Accordingly, it is hereby

ORDERED, that Defendants are prohibited from filing any tax return, amended return, form (including, but not limited to Form 4852 ("Substitute for Form W-2 Wage and Tax Statement, etc.")) or other writing or paper with the IRS that is based on the false and frivolous claims set forth in Cracking the Code that only federal, state or local government workers are liable for the payment of federal income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws (26 U.S.C.); and it is further

ORDERED, that within 30 days of the entry of this Amended Judgment and Order of Permanent Injunction, Defendants will file amended U.S. Individual Income Tax Returns for the taxable years ending on December 31, 2002 and December 31, 2003 with the Internal Revenue Service. The amended tax returns to be filed by Defendants shall include, in Defendants' gross income for the 2002 and 2003 taxable years, the amounts that Defendant Peter Hendrickson received from his former employer, Personnel Management, Inc., during 2002 and 2003, as well the amounts that Defendant Doreen Hendrickson received from Una E. Dworkin during 2002 and 2003.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge
Dated: May 2, 2007

Opinion of the Appellate Panel

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-1510

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.
PETER E. HENDRICKSON; DOREEN M. HENDRICKSON,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER
Before: GIBBONS and SUTTON, Circuit Judges; ACKERMAN, District Judge.

Peter E. and Doreen M. Hendrickson, pro se Michigan residents, appeal a district court grant of summary judgment for the government in this action to recover erroneous tax refunds filed under 26 U.S.C. § 7405(b). This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Peter E. Hendrickson is a tax protester who pled guilty to reduced charges for his role in a conspiracy to place a firebomb in a post office bin as a tax protest, which resulted in injuries to a postal worker and a bystander. *See United States v. Scarborough, 43* F.3d 1021, 1023 (6th Cir. 1994). Hendrickson subsequently wrote a book entitled "Cracking the Code: The Fascinating Truth About Taxation in America" in which he apparently advocates improper schemes others have followed to avoid paying federal income tax. *See United States v. Kunn,* No. CV06-1458-PCT-FJM, 2006 WL

2663783, at *3 (D. Ariz. Aug. 18, 2006); *United States v. Hill, No.* CV-05-877-PHXDGC, 2005 *WL 3536118,* at *5 n.2 (D. Ariz. Dec. 22, *2005).*

The government filed its complaint on April *12,* 2006, seeking to recover amounts refunded to the Hendricksons pursuant to fraudulent tax returns filed for the *2002* and *2003* tax years. In addition, the government sought injunctive relief pursuant to 26 U.S.C. § 7402(a) to compel the Hendricksons to file corrected 2002 and 2003 tax returns and to prohibit them from filing fraudulent tax documents in the future. The Hendricksons moved to dismiss the complaint, and the matter was referred to the magistrate judge. The government responded in opposition to the motion to dismiss, and the Hendricksons filed a reply. In addition, the government moved for summary judgment, the Hendricksons filed a response, and the government filed a reply.

The magistrate judge recommended that the Hendricksons' motion to dismiss be denied and that the government's motion for summary judgment be granted except with respect to the injunctive relief sought, and the Hendricksons filed objections to both recommendations. The district court adopted the magistrate judge's recommendation and denied the Hendricksons' motion to dismiss, and adopted in part the magistrate judge's recommendation that summary judgment for the government be granted, but also granted the government's request for injunctive relief to require amended 2002 and 2003 returns. The government filed a motion to amend the judgment, and the Hendricksons filed motions for relief from judgment and for reconsideration. The government responded in

opposition to the motion for relief from judgment, and the Hendricksons filed a reply and a notice of appeal. The district court denied the Hendricksons' motions, but granted the government's motion and entered an amended judgment and order of permanent injunction. The Hendricksons filed a timely amended notice of appeal.

On appeal, the Hendricksons make numerous challenges to the district court's jurisdiction and judgment which fairly can be characterized as plainly baseless tax protester arguments. The government responds that the district court's judgment was proper, and has filed a separate motion for sanctions in the amount of $8,000.00 pursuant to Fed. R. App. P. 38. The Hendricksons have not responded to the government's motion. Upon consideration, we grant the motion for sanctions in part, and affirm the district court's judgment.

This court reviews de novo a district court grant of summary judgment, making any reasonable inference in favor of the non-moving party. *United States v. Guy,* 978 F.2d 934, 936 (6th Cir. 1992); *EEOC v. Univ. of Detroit,* 904 F.2d 331, 332 (6th Cir. 1990). Generally, summary judgment is proper where no genuine issue exists as to any material fact and the moving party is entitled to a judgment as a matter of law. *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23 (1986); *Guy,* 978 F.2d at 936. The burden is upon the moving party to show "that there is an absence of evidence to support the non-moving party's case." *Celotex Corp.,* 477 U.S. at 325. Thereafter, the nonmoving party must present significant probative evidence in support of the

complaint to defeat the motion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986). The nonmoving party is required to show more than a metaphysical doubt as to the existence of a genuine issue of material fact. M*atsushita Elec. Indus. Co. v. Zenith Radio Corp., 475* U.S. 574, 586 (1986). Here, summary judgment for the government was proper.

First, the Hendricksons' jurisdictional challenges lack merit. The United States plainly may sue for return of taxes erroneously refunded pursuant to 26 U.S.C. § 7405(b). *Guy,* 978 F.2d at 938. Moreover, 26 U.S.C. § 7402(a) gives district courts the authority to grant injunctions "necessary or appropriate for the enforcement of the internal revenue laws." *United States v. First Nat '1 City Bank,* 379 U.S. 378, 380 (1965). The Hendricksons' initial assertion on appeal, that the district court lacked jurisdiction in this case because another statutory provision, 26 U.S.C. § 6201, authorizes and requires the Secretary of the Treasury to determine and assess taxes, was properly rejected by the district court as irrelevant and patently meritless. The Hendricksons' remaining jurisdictional challenges at least arguably were not asserted in the district court, and should not be considered in the first instance on appeal. *See Weinberger v. United States,* 268 F.3d 346, 352 (6th Cir. 2001) (citing *Foster v. Barilow, 6* F.3d 405, 407 (6th Cir. 1993)). Nonetheless, it is noted that the challenges are patently meritless. For example, the Hendricksons' assertion that the government lacks standing under 26 U,S.C. § 7405(b) to seek return of taxes not already determined is wholly unsubstantiated as is their equally meritless

contention that the district court lacks jurisdiction to determine tax liability. Similarly, an executive order that requires "litigation counsel" to attempt to settle a dispute, or to confirm that the referring agency has attempted to settle a dispute before filing suit, while laudable, simply does not deprive the district court of jurisdiction. The Hendricksons' remaining jurisdictional challenges are equally meritless.

The Hendricksons' remaining claims also plainly lack merit. First, the Hendricksons contend that the district court improperly weighted the evidence in favor of the government when it found that Peter E. Hendrickson was an "employee" who had been paid "wages," and that Doreen M. Hendrickson had received "non-employee compensation." However, this contention is tantamount to a typical tax protester argument that the income at issue is not taxable. *Cf. Weston v. Comm'r*, 775 F.2d 147, 147-48 (6th Cir. 1985). Finally, the assertion that the government is prohibited from suggesting that Peter E. Hendrickson's book promotes false or fraudulent tax schemes because the subject of the book was addressed in prior litigation is plainly meritless. Accordingly, the Hendricksons' remaining claims are meritless, and the district court properly granted summary judgment for the government in this case.

Given the patent baselessness of the Hendricksons' assertions on appeal, the government's motion for sanctions will be granted, but only in the amount of $4,000.00. As noted, the government seeks $8,000.00, an amount it contends is justified by records that show that average costs incurred in frivolous taxpayer appeals in 2004 and

2005 exceeded $11,000.00. However, this court consistently has awarded $4,000.00 sanctions in frivolous tax protester appeals. *See Raft v. Comm'r*, 147 F. App'x 458, 462-63 (6th Cir. 2005). Under these circumstances, the government's motion for sanctions will be granted in the amount of $4,000.00.

Finally, it is noted that an unrelated non-lawyer, Charles Bassett, has filed an admittedly untimely motion for leave to file an amicus curiae brief in this case pursuant to Fed. R. App. P. 29. Review of the brief reflects only patently meritless tax protester claims, so the brief adds nothing helpful to the disposition of this appeal. For this reason, and because the motion is untimely, the motion is denied.

For the foregoing reasons, the government's motion for sanctions is granted in the amount of $4,000.00, and the district court's judgment is affirmed. *See* Rule 34(j)(2)(C). Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
Leonard Green
Clerk

Denial of En Banc Rehearing

No. 07-1510

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee
v.

PETER E. HENDRICKSON, ET AL., Defendants-Appellants.

BEFORE: GIBBONS and SUTTON, Circuit Judges; and ACKERMAN, District Judge.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

Filed December 16, 2008
LEONARD GREEN, Clerk

Fundamental Law, Statutes, Rules and Regulations Not Reproduced In The Petition

First Amendment, United States Constitution:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress

of grievances.

Fifth Amendment, United States Constitution:
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Seventh Amendment, United States Constitution:
"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

Sixteenth Amendment, United States Constitution:
"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

§3173 of the Revised Statutes, as amended in 1919:
"*And if any person, on being notified or required as aforesaid,* [this is a reference to the 10-day notice to be given to anyone who has not filed timely] *shall refuse or neglect to render such list or return within the time required as aforesaid, or whenever any person*

who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or delivers any return which, in the opinion of the collector, is erroneous, false or fraudulent, or contains any undervaluation or understatement, or refuses to allow any regularly authorized Government officer to examine the books of such person, firm, or corporation, it shall be lawful for the collector to summon such person..."

(The statute goes on to authorize the examination of books and records, taking of testimony, etc.; and--solely in the case of refusal to file or the filing of a false or fraudulent return by someone required to deliver a monthly or other return of objects subject to tax, as listed above-- the production of a return by the Secretary. It is worth emphasizing that this latter authority does not extend to individual annual returns of "income", even when such returns have not been filed. We see this distinction accurately reflected in the current IRC at 6020.)

The first codified representation of the statutory language from R. S. 3173 offers a very clear reflection of the statute. That representation, in the 1939 IRC, is as follows:

§3615 of the Internal Revenue Code of 1939:

§3615. SUMMONS FROM COLLECTOR TO PRODUCE BOOKS AND GIVE TESTIMONY.

(a) GENERAL AUTHORITY.—It shall be lawful for the collector, subject to the provisions of this section to summon any person to appear before him and produce books at a time and place named in the summons, and to give testimony or answer interrogatories, under oath, respecting any objects or income liable to tax or

the returns thereof.

...

(b) ACTS CREATING LIABILITY.—Such summons may be issued—

(1) REFUSAL OR NEGLECT TO COMPLY WITH NOTICE REQUIRING RETURN.—If any person, on being notified or required as provided in section 3611, shall refuse or neglect to render such list or return within the time required, or

(2) FAILURE TO RENDER RETURN ON TIME.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax fails to do so at the time required, or

(3) ERRONEOUS, FALSE, OR FRAUDULENT RETURN.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax delivers any return which, in the opinion of the collector, is erroneous, false, or fraudulent, or contains any undervaluation or understatement, or

(4) REFUSAL TO PERMIT EXAMINATION OF BOOKS.—Whenever any person who is required to deliver a monthly or other return of objects subject to tax refuses to allow any regularly authorized Government officer to examine his books.

26 USC § 6014. Income tax return—tax not computed by taxpayer:

(a) Election by taxpayer

An individual who does not itemize his deductions and who is not described in section 6012 (a)(1)(C)(i), whose gross income is less than $10,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as

defined in section 3401 (a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section. In such case the tax shall be computed by the Secretary who shall mail to the taxpayer a notice stating the amount determined as payable.

26 USC §6020. - Returns prepared for or executed by Secretary:

(a) Preparation of return by Secretary

If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary may prepare such return, which, being signed by such person, may be received by the Secretary as the return of such person.

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns

Any return so made and subscribed by the Secretary shall be prima facie good and sufficient for all legal purposes.

26 USC §6201 Assessment authority:

(a) Authority of Secretary

The Secretary is authorized and required to make the

inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

26 USC §6402. - Authority to make credits or refunds:

(a) General rule

In the case of any overpayment, the Secretary, within the applicable period of limitations, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of an internal revenue tax on the part of the person who made the overpayment and shall, subject to subsections (c), (d), and (e), refund any balance to such person.

26 USC §7405 Action for recovery of erroneous refunds:

(a) Refunds after limitation period

Any portion of a tax imposed by this title, refund of which is erroneously made, within the meaning of section 6514, may be recovered by civil action brought in the name of the United States.

(b) Refunds otherwise erroneous

Any portion of a tax imposed by this title which has been erroneously refunded (if such refund would not be considered as erroneous under section 6514) may be recovered by civil action brought in the name of the United States.

28 USC § 2201. Creation of remedy.

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986,... ...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Federal Rules of Civil Procedure 12(h)(3):

Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

Federal Rules Of Civil Procedure, Rule 41. Dismissal of Actions:

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without order of court

> *(ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.*

26 CFR §301.6402-3 Special rules applicable to income tax:

(a) In the case of a claim for credit or refund filed after June 30, 1976--

(5) A properly executed individual, fiduciary, or corporation original income tax return or an amended return (on 1040X or 1120X if applicable) shall constitute a claim for refund or credit within the meaning of section 6402 and section 6511 for the amount of the overpayment disclosed by such return (or amended return).

Internal Revenue Manual §5.1.11.6.8 (03-01-2007):

IRC 6020(b) Authority

1. The following returns may be prepared, signed and assessed under the authority of IRC 6020(b):

A. Form 940, Employer's Annual Federal Unemployment Tax Return

B. Form 941, Employer's Quarterly Federai Tax Return

C. Form 942, Employer's Quarterly Tax Return for Household Employees

D. Form 943, Employer's Annual Tax Return for Agricultural Employees

E. Form 720, Quarterly Federal Excise Tax Return

F. Form 2290, Heavy Vehicle Use Tax Return

G. Form CT-1, Employer's Annual Railroad Retirement Tax Return

H. Form 1065, U.S. Partnership Return of Income

Treasury Department Certificates of Assessment for Peter and Doreen Hendrickson for 2002 and 2003

United States **of America**

Department of the Treasury
Internal Revenue Service

Date February 9, 2006

CERTIFICATE OF OFFICIAL RECORD

I certify that the annexed is a true Form 4340, Certificate of Assessments, Payments and Other Specified Matters for Peter E. & Doreen M Hendrickson, SSN and Spouse SSN , for U.S. Individual Income Tax Return (Form 1040), for tax period December 31, 2002, consisting of two pages.

under the custody of this office.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written

By direction of the Secretary of the Treasury:

Linda L Drake
Supervisor Accounting Technician
Ogden W&I Submission Processing
SW Delegation Order 198

EXHIBIT 3

BEST AVAILABLE COPY

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

PETER E & DOREEN M HENDRICKSON EIN/SSN:

TYPE OF TAX: U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 TAX PERIOD: DEC 2002

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT, OTHER DEBITS (REVERSAL)	PAYMENT, CREDIT (REVERSAL)	ASSESSMENT DATE (23C, RAC 006)
	ADJUSTED GROSS INCOME 26.00			
08-25-2003	RETURN FILED & TAX ASSESSED 08221-236-16503-3		0.00	09-29-2003
04-15-2003	WITHHOLDING & EXCESS FICA		10,152.96	
03-21-2003	EXTENSION OF TIME TO FILE EXT. DATE 08-15-2003			
04-15-2003	OVERPAYMENT CREDIT TRANSFERRED 1040 200012		(1,699.86)	
04-15-2003	OVERPAYMENT CREDIT TRANSFERRED 1040 200112		(6,521.11)	
04-15-2003	OVERPAYMENT CREDIT TRANSFERRED 1040 200012		(1,931.99)	

FORM 4340 (REV. 01-2002) PAGE 1

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

PETER E & DOREEN M HENDRICKSON EIN/SSN:

TYPE OF TAX: U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 TAX PERIOD: DEC 2002

BALANCE 0.00

I CERTIFY THAT THE FOREGOING TRANSCRIPT OF THE TAXPAYER NAMED ABOVE IN RESPECT TO THE TAXES SPECIFIED IS A TRUE AND COMPLETE TRANSCRIPT FOR THE PERIOD STATED, AND ALL ASSESSMENTS, ABATEMENTS, CREDITS, REFUNDS, AND ADVANCE OR UNIDENTIFIED PAYMENTS, AND THE ASSESSED BALANCE RELATING THERETO, AS DISCLOSED BY THE RECORDS OF THIS OFFICE AS OF THE ACCOUNT STATUS DATE ARE SHOWN THEREIN. I FURTHER CERTIFY THAT THE OTHER SPECIFIED MATTERS SET FORTH IN THIS TRANSCRIPT APPEAR IN THE OFFICIAL RECORDS OF THE INTERNAL REVENUE SERVICE.

SIGNATURE OF CERTIFYING OFFICER: Linda L. Drake

PRINT NAME: Linda L Drake

TITLE: Supervisor Accounting Technician, Ogden W&I Submission Processing

DELEGATION ORDER: SW Delegation Order 198

LOCATION: INTERNAL REVENUE SERVICE

ACCOUNT STATUS DATE 02/09/2006

FORM 4340 (REV. 01-2002) PAGE 2

United States of America

Department of the Treasury
Internal Revenue Service

Date February 9, 2006

CERTIFICATE OF OFFICIAL RECORD

I certify that the annexed: is a true Form 4340, Certificate of Assessments, Payments and Other Specified Matters for Peter E & Doreen M. Hendrickson, SSN: and Spouse SSN , for U.S. Individual Income Tax Return (Form (1040), for tax period December 31, 2003, consisting of two pages

under the custody of this office

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of this office to be affixed, on the day and year first above written

By direction of the Secretary of the Treasury.

Linda L. Drake
Supervisor Accounting Technician
Ogden W&I Submission Processing
SW Delegation Order 198

EXHIBIT 4

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

PETER E & DOREEN M HENDRICKSON EIN/SSN:

TYPE OF TAX: U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 TAX PERIOD: DEC 2003

DATE	EXPLANATION OF TRANSACTION	ASSESSMENT, OTHER DEBITS (REVERSAL)	PAYMENT, CREDIT (REVERSAL)	ASSESSMENT DATE (23C, RAC 006)
	ADJUSTED GROSS INCOME 286.00			
04-15-2004	RETURN FILED & TAX ASSESSED 09221-195-38349-4 200419		28.34	05-24-2004
04-15-2004	WITHHOLDING & EXCESS FICA		10,256.34	
04-15-2004	OVERPAYMENT CREDIT TRANSFERRED 1040 200812		(5,551.44)	
04-15-2004	CREDIT TRANSFERRED		(515.66)	
04-15-2004	CREDIT TRANSFERRED		(553.17)	
04-15-2004	CREDIT TRANSFERRED		(529.18)	
06-14-2004	OVERPAID CREDIT APPLIED		32.91	
10-04-2004	REFUND		(3,172.30)	
10-04-2004	INTEREST DUE TAXPAYER		60.84	

FORM 4340 (REV. 01-2002) PAGE 1

CERTIFICATE OF ASSESSMENTS, PAYMENTS, AND OTHER SPECIFIED MATTERS

PETER E & DOREEN M HENDRICKSON EIN/SSN:

TYPE OF TAX: U.S. INDIVIDUAL INCOME TAX RETURN
FORM: 1040 TAX PERIOD: DEC 2003

BALANCE 0.00

I CERTIFY THAT THE FOREGOING TRANSCRIPT OF THE TAXPAYER NAMED ABOVE IN RESPECT TO THE TAXES SPECIFIED IS A TRUE AND COMPLETE TRANSCRIPT FOR THE PERIOD STATED, AND ALL ASSESSMENTS, ABATEMENTS, CREDITS, REFUNDS, AND ADVANCE OR UNIDENTIFIED PAYMENTS, AND THE ASSESSED BALANCE RELATING THERETO, AS DISCLOSED BY THE RECORDS OF THIS OFFICE AS OF THE ACCOUNT STATUS DATE ARE SHOWN THEREIN. I FURTHER CERTIFY THAT THE OTHER SPECIFIED MATTERS SET FORTH IN THIS TRANSCRIPT APPEAR IN THE OFFICIAL RECORDS OF THE INTERNAL REVENUE SERVICE.

SIGNATURE OF CERTIFYING OFFICER: Linda L Drake

PRINT NAME: Linda L Drake

TITLE: Supervisor Accounting Technician, Ogden W&I Submission Processing

DELEGATION ORDER: SW Delegation Order 198

LOCATION: INTERNAL REVENUE SERVICE

ACCOUNT STATUS DATE 02/09/2006

FORM 4340 (REV. 01-2002) PAGE 2

SUPPLEMENTAL APPENDIX

128

(2)

Supreme Court, U.S.
FILED

081399 MAR 11 2009

OFFICE OF THE CLERK

CASE NO.

IN THE SUPREME COURT OF THE UNITED STATES

Peter E. Hendrickson and Doreen M. Hendrickson, Petitioners

v.

United States, Respondent

On Petition for Writ of Certiorari to the United States Court Of Appeals for the Sixth Circuit

SUPPLEMENTAL APPENDIX

Petitioners Peter E. Hendrickson and Doreen M. Hendrickson
232 Oriole Road,
Commerce Twp., Michigan, 48382
248-366-6858
Proceeding Pro Se

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REPORT AND RECOMMENDATION

Before the Court is Defendants Peter and Doreen Hendrickson's *Motion to Dismiss* pursuant to Fed. R. Civ. P. 12(1) and 12(b)(6), as well as motion for relief under Rules 9(b), 12(f), and 11, filed on May 2,2006 [Docket *#4*] which have been referred for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(l)(B). For the reasons set forth below, I recommend that Defendants' motions be DENIED.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed the present suit on April 12, 2006 for recovery of "erroneous tax refunds," further requesting that the district court permanently enjoin Defendants from filing "false and fraudulent tax returns and forms with the Internal Revenue Service." The complaint states that Peter Hendrickson, with his wife Doreen, filed a joint tax return which falsely stated that they received no wages or salaries for 2002 and 2003, despite the fact that Hendrickson's W-2 Wage and Tax Statements for those years shows that he earned $58,965 and $60,608 respectively. *Complaint,* 1 14. Plaintiff asserts that Defendant's erroneous belief that his earnings were not taxable is premised on the fact he is not an employee of the federal government and therefore not required to pay federal income taxes. *Id.* at 19.

Defendants' present motion seeks dismissal, arguing that Plaintiff has failed to state a claim upon which relief may be granted as well as on jurisdictional grounds. *Docket #4,* 1111-14. Alternatively, pursuant to Fed. R. Civ. P. 9(b), Defendants ask the Court to require Plaintiff to particularize the complaint's allegations of fraud. *Id.* at 15-16. Defendants also move to strike "paragraphs and words" from the

complaint that they deem "irrelevant, immaterial impertinent, scandalous and without any basis in law or fact." *Id.* at 118; Fed. R. Civ. P. 12(f). Finally, Defendants request Fed. R. Civ. P. 11 sanctions on the basis that the complaint against them contains false representations. *Id.* at 1119-21.

II. STANDARD OF REVIEW

Fed.R.Civ.P. 12(b)(6) provides for dismissal of a complaint "for failure of the pleading to state a claim upon which relief can be granted." Rule 12(b) also provides that if, on consideration of a motion under paragraph (6), "matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 (summary judgment)." In assessing a Rule 12(b)(6) motion, the court accepts the plaintiff s factual allegations as true, and asks whether, as a matter of law, the plaintiff is entitled to legal relief. *Rippy* v. *Hattaway,* 270 F.3d 416, 419 (6th Cir. 2001). "[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hartford Fire Insurance Co. v. California,* 509 U.S.764,811,113S.Ct.2891,125L.Ed.2d612(1993)(quoting *Conley* v. *Gibson,* 355 U.S. 41,45-46, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

III. ANALYSIS

A. Jurisdiction

Defendants contend that this Court is without jurisdiction to hear Plaintiffs case, asserting that they "have no knowledge of any statute, rule, regulation or other provision of law that would permit suit against them by an entity known as 'United States of America." *Docket #4,* ¶1. Defendants dispute

Plaintiff's characterization of the tax refund in question as "erroneous," maintaining instead that "there was no tax liability for the years 2002 and 2003," therefore "any funds returned to Defendants were not a 'refund of tax,' but quite simply a return of their own property." *Id.* At ¶7. On a related note, Defendants contend that the government's case against them is subject to Fed. R. Civ. P. 12(b)(6) dismissal since this Court "is without jurisdiction to grant [injunctive] relief," alleging further that they filled out their 1040 forms for the years in question to the "best of [their] knowledge and belief." *Id.* at ¶¶8-14.

Fed. R. Civ. P. 12(b)(l) provides for dismissal of a complaint for lack of subject matter jurisdiction. "Where subject matter jurisdiction is challenged pursuant to 12(b)(l), the plaintiff has the burden of proving jurisdiction in order to survive the motion." *Michigan Southern R.R. Co. v. Branch & St. Joseph Counties Rail Users Ass'n., Inc.*, 287 F.3d 568,573 (6th Cir. 2002). However, "[w]hen a 12(b)(l) motion attacks the face of a complaint, the plaintiff's burden to prove federal question subject matter jurisdiction is not onerous." *Musson Theatrical, Inc. v. Federal Exp. Corp.*, 89 F.3d 1244, 1248 (6th, Cir. 1996). "Specifically, the plaintiff must show that the complaint 'alleges a claim under federal law, and that the claim is substantial.'" *Michigan Southern R.R. Co.*, 287 F.3d at 573; *Musson Theatrical, Inc.*, 89 F.3d at 1248 (internal citations omitted).

Plaintiff has established beyond peradventure that this Court enjoys subject matter over this action under 28 U.S.C. ¶¶ 1340 and 1345 as well as IRC ¶¶7402(a) and 7405. Defendants' contention that they are not subject to suit by Plaintiff has been soundly rejected by numerous courts. *United States v. Ekblad*, 732

F.2d 562, 563 (7th Cir. 1984), deemed this type of argument "wholly frivolous," pointing out that "Congress has vested in the district court jurisdiction over 'any case commenced by the United States', 28 U.S.C. § 1345, and specifically 'to render such judgments and decrees as may be necessary or appropriate for the enforcement of the Internal Revenue laws'" *Id.* at 563; 26 U.S.C. § 7402(a).

Moreover, as noted by Plaintiff, Defendants' purported reliance on a distinction between "United States of America" and "United States" does shield them from the present suit. The court in *United States v. Furman,* 168 F. Supp.2d 609, 613-614 (E.D. La. 2001), denying the defendant's petition for abatement, found that despite the reference in Article III section 1 to the judicial power of the *United States,* "'not the judicial power of the 'United States *of America*' . . . . [the defendant] was aware of the true identity of his prosecutor, irrespective of whether it referred to itself as the 'United States or the 'United States of America.'" *Id;* U.S.C.A. Const. Art. III § 1 (emphasis in original). Defendants' additional argument that they filled out their tax form to the "best of [their] knowledge and belief also fails to present grounds for dismissal. Their unilateral belief that they are not obligated to pay income tax stands unsupported by precedent or scholarly interpretation of the law. *See Fromson v. U.S.,* 32Fed.Cl. 1,11 (Fed.Cir. 1994) (denying relief on the basis that "subjective beliefs were not reasonable as a matter of law"). Assuming for the sake of argument that Defendants hold a sincere and good-faith belief that they need not pay income tax, this belief is not objectively reasonable. *See Doyle v. Oklahoma Bar Ass 'n,* 998F.2d 1559,1569-1570 (10th Cir. 1993) ("An abstract desire or unilateral

hope do[es] not establish a protected interest"). Likewise, Defendants' belief that their refusal to acknowledge the existence of the "United States of America" allows them to skirt their tax obligations fails as a matter of law for its lack of reasonableness.

B. Fed. R. Civ. P. 12(e)

Next, Defendants argue that Plaintiff should be required to submit a more definite statement, contending that the "complaint is so vague and ambiguous that Defendants cannot reasonably be required to frame an answer." Docket #4, ¶¶15-16. Citing Fed. R. Civ. P. 9(b), Defendants assert that the complaint's allegations of fraud should be stated "with particularity." *Id.;* Fed. R. Civ. P. 12(e).

While generally, "Fed.R.Civ.P. 8(a) requires only a short and plain statement of the claim ... sufficient to put the defendant(s) on notice of the claim against them[,] Rule 9(b) requires that in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." *Rankin v. Rots*, 278 F.Supp.2d 853, 865 (E.D.Mich.2003)(internal citations omitted). "In such a situation . . . the rules contemplate a repleader, not a dismissal" pursuant to Fed.R.Civ.P. 12(e). *Pelletier v. Zweifel* 921 F.2d 1465, 1492(11th 1991). Rule 12(e) allows that "[i]f a pleading... is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading."

While Defendants state correctly that allegations of fraud demand a heightened level of pleading beyond the usual "notice" standard, the Court notes that Plaintiff's allegations of fraud found in ¶¶13-18, 21, 23,

25, 27, 28, 31 of its original complaint, which by itself states the allegations of fraud with adequate particularity, have been amended further in Plaintiff s response to the present motion to include an even more comprehensive description of each of its fraud allegations. *See* Docket #6.

For example, page 6, ¶8 states that "[Defendants] reported 'zero' or no wages or salaries on line 7 of their 2002 tax return. On line 62 of their 2002 return, they reported, incorrectly, federal income tax withheld from Forms W-2 and 1099 of $10,152.96." *Id.* Pages 5-10 of Plaintiff s response detail the alleged frauds upon the government in similarly explicit detail. Plaintiff has provided an abundance of information to support its allegations of fraud and Defendants' motion for a more definite statement should be denied. *See Stromillo v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* 54 F.R.D. 396, 397 (E.D.N.Y. 1971)(rejecting the defendant's motion for a more definite statement under 9(b) for the reason that "averments of fraud" had been "particularized to the point....that nothing is left to the imagination; the level of abstraction is as low as it is possible to get without erring on the side of verbosity").[1]

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[1]Further, pursuant to IRC §6532(b), the two-year statute of limitations would bar the present action in the absence of "fraud or misrepresentation of a material fact." The presence of fraud allegations extends the statute of limitations to five years. Plaintiff is therefore required to allege fraud to preserve its claim.

C. Fed. R. Civ. P. 12(f)

Defendants request further that the Court strike "pejorative," "frivolous," and "fraudulent and misleading words" from the complaint on the basis

that the objectionable terms were used "solely to malign the Defendants and inflame the passions ... of any person who happens to read the complaint." Docket #4, ¶¶17-18. Defendants take issue with the complaint's use of the word "bogus" to describe their political views and the characterization of their informational website as" tax fraud promotional materials." *Id.*

Fed. R. Civ. P. 12(f) states in pertinent part that upon motion of a party, "the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." The Sixth Circuit has held that "the action of striking a pleading should be used sparingly by the courts" and should be used "only when required for the purposes of justice" and when "the pleading to be stricken has no possible relation to the controversy." *Brown & Williamson Tobacco Corp. v. United States,* 201 F.2d 819, 822 (6th Cir.1953). "Rule 12(f) motions are generally viewed with disfavor 'because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic.'" *Waste Management Holdings, Inc. v. Gilmore,* 252 F.3d 316, 347 (4th Cir. 2001); 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 1380, 647 (2d ed. 1990).

Plaintiffs use of colloquialisms such as "bogus" (interpreted by the Court to mean without merit, or fraudulent) and its use of the word "brag" to describe Defendants' website material does not justify a Fed. R. Civ. P. 12(f) remedy. "For purposes of 12(f), a scandalous pleading must 'reflect cruelly' upon the defendant's moral character, use 'repulsive language', or 'detract from the dignity of the court.'" *Core Leasing, Inc. v. American Airlines, Inc.* 1990 WL

92562, *5 (E.D.Pa. 1990); *Skadegaardv. Farrett,* 578 F. Supp. 1209, 1221 (D.NJ. 1984). "[N]on-neutral allegations will invariably be found in pleadings. They represent good advocacy, and are not a proper basis for a motion to strike." *Willson* v. *Cagle,* 711 F.Supp. 1521, 1535(N.D.Cal.,1988).[2]

[2]*But see RDFMedia Ltd. v. Fox Broadcasting Co.,* 372 F.Supp.2d 556,567 (C.D.Cal. 2005) in which the court struck a pleading describing an alleged copyright infringement as "rush-job rip-off." While "bogus" is not the most dignified choice of adjectives, the Court is disinclined to strike a word plainly synonymous with the word "fraud," which is used repeatedly in the complaint.

D. Fed. R. Civ. P. 11 Sanctions

Last, Defendants request sanctions on the basis that the complaint against them contains false representations. *Docket #4,* ¶¶19-21. "Sanctions are appropriate when 'an attorney intentionally abuses the judicial process or knowingly disregards the risk that his actions will needlessly multiply proceedings. '"*Legair v. Circuit City Stores, Inc.* 2007 WL 98085, *3 (6th Cir. January 12, 2007); *Red Carpet Studios Div. of Source Advantage, Ltd. v. Safer,* 465 F.3d 642, 646 (6th Cir.2006)(internal citations omitted). In the absence of evidence showing that the government has made deliberately false representations or otherwise abused the judicial process, Defendants' motion should be denied.

IV. CONCLUSION

For the reasons set forth above, I recommend that Defendant's motion for dismissal pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6) be DENIED. Further, Defendants' request for relief under Fed. R. Civ. P. 9(b), 12(f), and 11 should be DENIED.

Any objections to this Report and Recommendation must be filed within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(l) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v Am,* 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v Secretary of HHS,* 932 F.2d 505 (6th Cir. 1991); *United States v Walters,* 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v Secretary of HHS,* 931 F.2d 390, 401 (6th Cir. 1991); *Smith v Detroit Fed'n of Teachers Local 231,* 829F.2d 1370,1373(6thCir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE
February 5, 2007

ERRATA SHEET TO REPORT AND RECOMMENDATION

On February 5, 2007, the undersigned issued a Report and Recommendation [Docket #15] with

regard to the Defendants' Motion to Dismiss. This Errata Sheet will correct the following typographical error found on page 4, lines 17-19 of the Report and Recommendation:

> "...Defendants' purported reliance on a distinction between 'United States of America' and 'United States' does shield them from the present suit."

will be changed to:

> "...Defendants' purported reliance on a distinction between 'United States of America' and 'United States' does not shield them from the present suit."

The Report and Recommendation will in all other respects remain unchanged.

SO ORDERED.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE
Dated: February 7, 2007

REPORT AND RECOMMENDATION

Before the Court is Plaintiff United States of America's *Motion for Summary Judgment* under Fed. R. Civ. P. 56(c) [Docket #9], filed July 13, 2006, which has been referred for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). For the reasons set forth below, I recommend that, because Defendants' 2002 and 2003 tax returns and Form 4852 for both years contained misrepresentations of material fact,

1. Plaintiff's motion be GRANTED as to recovery, with interest, of the erroneously issued

refunds in the amount of $20,380.96.

2. Plaintiff's motion as to the request for injunctive relief, enjoining Defendants from "filing any tax return or amended return with the IRS that is based on the claim that only federal, state or local government workers are liable for the payment of income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws" be GRANTED.

3. The finding that Plaintiff should recover erroneously issued refunds, plus interest, originally issued to Defendants for the tax years 2002 and 2003, obviates the need to require Defendants to file corrected amended Form 1040 tax returns for the 2002 and 2003 tax years. Therefore, that portion of Plaintiff's request for injunctive relief should be DENIED AS MOOT.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed the present suit on April 12, 2006 for recovery, with interest, of "erroneous refunds of federal income, social security and Medicare taxes," for a total of $20,380.96. *Complaint,* ¶*1.* Plaintiff alleges that Peter Hendrickson, with his wife Doreen, filed a joint tax return which falsely stated that they received no wages or salaries for 2002 and 2003, despite the fact that Hendrickson's W-2 Wage and Tax Statements for those years shows that he earned $58,965 and $60,608 respectively. *Id.,* ¶14.

Plaintiff also requests that the district court permanently enjoin Defendants from filing "false and fraudulent tax returns and forms with the Internal Revenue Service," further requesting that

Defendants be required to file corrected federal income tax returns for the 2002 and 2003 tax years. *Complaint* at 10.

Plaintiff's present motion, filed on July 13, 2006, alleges that during 2002 and 2003, Personnel Management, Inc., a company located in Farmington Hills, Michigan, paid Defendant Peter Hendrickson a salary during 2002 and 2003. According to his 2002 Form W-2, Hendrickson earned taxable wages of $58,965, with $5,642.20 withheld in income taxes; $3,655.83 in social security taxes; and $854.93 in Medicare taxes. *Docket #9,* Exhibit 1. The Form W-2 for tax year 2003 indicates that Hendrickson received $60,608.00 for that year with income taxes of $5,620.02, social security taxes of $3,757.60, and Medicare taxes of $878.72. *Id.*

In August, 2003, Defendants filed a joint U. S. Individual Income Tax Return for tax year 2002 reporting "zero" wages. *Docket #9,* Exhibit 2, Attachment 1. Defendants attached a Form 4852 ("substitute for Form W-2 Wage and Tax Statement") reporting that he had received no wages for 2002, but apparently citing Defendant Peter Hendrickson's W-2 form, which stated that $5,642.20 had been withheld in income taxes; $3,655.83 in social security taxes, and $854.93 in Medicare taxes. *Id.* at Exhibit 1, Attachment 1; Exhibit 2, Attachment 1. Defendant Peter Hendrickson included the following explanation for his failure to produce a form W-2:

> "Request, but the company refuses to issue forms correctly listing payments of ` wages as defined in 3401(a) and 3121(a)' for fear of IRS retaliation. The amounts listed as withheld on the W-2 it submitted are correct, however."

Id. Line 70 of Defendants' 2002 Form 1040 states that they had overpaid their 2002 federal tax liabilities by $10,152.96, equaling the amount withheld by Peter Hendrickson's employer. *Id.* at Exhibit 2, Attachment 1. Plaintiff states that intially, the IRS erroneously treated the $10,152.96 as a tax overpayment, and on April 15, 2003 applied the "overpayment" to Defendants' various pre-existing federal tax liabilities for the years 2000 and 2001. *Id.* at Exhibit 2, Attachment 3.

Likewise, Defendants reported no wages for 2003, with an adjusted gross income of $286.14 for a total tax of $28.34, again attaching a Form 4852 to their federal tax return indicating $10,256.34 taken out of Peter Hendrickson's paycheck in federal income taxes, social security taxes, and Medicare taxes. Docket #9, Exhibit 2, Attachment 2. Defendants submitted their tax return requesting a refund of $10,228.00, reflecting the amount withheld by Defendant Peter Hendrickson's employer, minus $28.34. On April 15, 2004, the IRS applied a credit of $5,551.44 to Peter Hendrickson's unpaid 2000 federal income tax liabilities. *Id.* at Exhibit 2, Attachment 4. Credits of $515.66, $553.17, and $529.18 were applied to IRC § 6702 penalties assessed against Defendants. *Id.* On October 4, 2004, the IRS issued a refund check in the amount of $3,172.30. *Id.*

II. STANDARD OF REVIEW

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R.Civ.P. 56(c). To

prevail on a motion for summary judgment, the non-moving party must show sufficient evidence to create a genuine issue of material fact. *Klepper v. First American Bank,* 916 F.2d 337, 341-42 (6th Cir. 1990). A mere scintilla of evidence is insufficient; "there must be evidence on which the jury could reasonably find for the [non-moving party]." *Id.* (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 252, 106 S.Ct. 2505,91 L.Ed.2d 202 (198b)). Entry of summary judgment is appropriate "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celetox Corp. v. Catrett,* 477 U.S. 317, 322, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

III. ANALYSIS

A. Tax Refunds

Pursuant to IRC § 7405, Plaintiff contends that it is entitled to recover its erroneously issued tax refunds or credits of $20,380.96, plus interest, for tax years 2002 and 2003. Citing the affidavit of Kim Halbrook, the human resources manager at Personnel Management, Inc., Plaintiff submits that in the absence of factual disputes, it is entitled to judgment as a matter of law. *Docket #9* at 13; Exhibit 1.

In *United States v. Wurts,* 303 U.S. 414, 415, 58 S.Ct. 637, 638, 82 L.Ed. 932 (1938), the Court held that "[t]he Government by appropriate action can recover funds which its agents have wrongfully, erroneously, or illegally paid." Further, IRC § 7405(b) (26 U.S.C § 7405) directs that "[a]ny portion of a tax imposed by this title which has been erroneously refunded ... may be recovered by civil action brought in the name of the

United States." The Sixth Circuit has held that "[b]y its plain language, [IRC §7405] allows the United States to recover refunds that the IRS makes by mistake." U.S. *v. Guy,* 978 F.2d 934, 938 (6th Cir. 1992); *Beer v. Commissioner,* 733 F.2d 435 (6th Cir.1984).

In the absence of any genuine issues of material fact, Plaintiff is entitled to judgment as a matter of law along with interest from the date of the erroneously issued refunds. IRC§ 6602.[1] Plaintiff has submitted affidavits by the payroll/human resource manager for Personnel Management, Inc., which states that the company paid Defendant Peter Hendrickson a salary in 2002 and 2003, reflected in accompanying Forms W-2 which indicate wages of $58,965 for 2002 and $60,608 for 2003. *Docket #9,* Exhibit 1, Attachment 1. Next, an affidavit by Shauna Henline, a technical advisor for the IRS states "the IRS received [Defendants'] 2002 Form 1040 on August 25, 2003," reporting "zero" wages for 2002 but nonetheless claimed $10,152.96 in refunds. *Id.* at Exhibit 2, ¶4. The same exhibit also includes Form 4852 which Defendants attached to their return in which they claim that their failure to submit a W-2 was due to Personnel Management, Inc.'s "refus[al]" to submit a"correct[]" W-2. *Id.* at Exhibit 2, Attachment 1. Exhibit 2, Attachment 3 shows that on April 15, 2003, the $10,152.96 claimed by Defendants was credited to outstanding federal tax liabilities from previous years.

Likewise for tax year 2003, Shauna Henline states that Defendants' Form 1040 reports "zero" income, but claims the $10,256.34 withheld by Peter Hendrickson's employer, minus $28.34 owed on Defendant Doreen Hendrickson's 2003 income *Id.* at Exhibit 2, ¶¶1011. Once again, Defendants submitted a

Form 4852 stating that Personnel Management, Inc. had failed to supply them with an accurate W-2. *Id.* at Exhibit 2, ¶12. Exhibit 2, Attachment 4 shows that Plaintiff received $10,256.34 on April 15, 2004, which was applied to existing tax liabilities ($5,551.44), and three frivolous return penalties against Defendants in the amounts of $515.66, $553.17, and $529.18. *Id.* at Exhibit 2, ¶16; Exhibit 2, Attachment 4 shows that the balance of the claimed "refund" was issued to Defendants in the amount of $3,172.30 on October 4, 2004.

Defendants do not deny that they filed 2002 and 2003 returns claiming $10,152.96 and $10,228 respectively, further acknowledging that these amounts were either applied to earlier tax liabilities or submitted to them by check. Instead, the Hendricksons make a number of arguments contesting this Court's jurisdiction, disputing the government's use of the word "taxpayers" to describe them *(Docket #* 13 at 2), and raising unsupported attacks on the credibility of Plaintiff's affiants. Defendants' other fanciful arguments against the government's recovery of the erroneously issued funds need not be enumerated, other than to say that they are "among an array of shopworn and quixotic arguments, having currency among so-called 'tax protestors,' but without any support in the law." *Spencer v. Social Security Administration,* 2006 WL 695782 *3 (E.D.Mich.2006).[2]

[2]Plaintiff also requests a finding that the erroneous refund action was induced by fraud. The presence of "fraud or misrepresentation of a material fact," extends the two-year statute of limitations of IRC §6532 to five years. Defendants, parsing the words "fraud" and "fraudulent," argue that their claims were non-fraudulent, premising this argument on the the affidavit of

Shuana Henline which refrains from describing Defendants' activity as "false or fraudulent." *Docket* #13 at 8; Docket #9, Exhibit 2. However, Defendants' 2002 and 2003 tax returns stating "zero" income stands at odds with the information found on Peter Hendrickson's Form W-2 for those years. Further, although Defendants' failed to attach the Forms W-2 to their tax returns, they claimed the monies "due" to them based on the amount of withholding indicated on those forms. These actions alone, clearly misrepresentations of material fact, cannot be mitigated by far-fetched interpretations of constitutional and statutory law. IRC § 6532(b).

When the "record taken as a whole could not lead a rational trier of fact to find for the nonmoving party," there is no genuine issue of material fact, and summary judgment is appropriate. *Simmons-Harris v. Zelman*, 234 F.3d 945, 951 (6th Cir. 2000). In this case, no rational trier of fact could possibly find for the Defendants. Rather, the evidence is "so one-sided that [the Plaintiff] must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc., supra,* 477 U.S. at 251-52

B. Injunctive Relief

Citing IRC § 7402(a), Plaintiff requests the following equitable relief prohibiting Defendants from

> "filing any tax return or amended return with the IRS that is based on the claim that only federal, state or local government workers are liable for the payment of income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws"

Docket #9 at 19. Plaintiff further contends that

> "Defendants should also be required, within a reasonable period of time, to file corrected amended Form 1040 tax returns for the 2002 and 2003 tax years with the IRS that report (1) the wages of $58,965 and $60,608 that Peter Hendrickson received from his employer, Personnel Management, Inc. in 2002 and 2003 respectively; and (2) the non-employee compensation of $3,773 and $3,188 that Doreen Hendrickson received from her employer in 2002 and 2003, respectively."

Id. at 19-20.

"An action to recover a tax refund [under § 7405] is an action for restitution." *United States v. Russell Mfg. Co.*, 349 F.2d 13, 16 (2d Cir. 1965). Moreover, IRC §7402(a), "[i]n addition to authorizing writs and orders ancillary to civil actions. . .gives the district courts jurisdiction to issue `such other orders and processes, and to render such judgments and decrees as may be necessary or appropriate for the enforcement of the internal revenue laws.'" *United States v. First National City Bank,* 568 F.2d 853, 855-856 (2nd Cir.1977) ; 28 U.S.C. § 1651 (1970). *See also U.S v. Ernst & Whinney,* 735 F.2d 1296, 1300 (11th Cir. 1984) "The language of § 7402(a) encompasses a broad range of powers necessary to compel compliance with the tax laws. . . . It has been used to enjoin interference with tax enforcement even when such interference does not violate any particular tax statute." Id. (internal citations omitted).

Evidence of Defendants' deliberate misstatements contained in Form 1040 and Form 4852

for tax years 2002 and 2003 establishes the need for a permanent injunction enjoining such activity. That need is compounded by the fact that Defendants not only falsified their own income tax returns, but continue to encourage others to follow their lead, as stated on a website operated by Defendant Peter Hendrickson. Thus, Defendants' actions impose an immediate and irreparable injury on the United States by impeding, impairing and obstructing the assessment and collection of federal taxes. The Court agrees with Plaintiff's additional argument that the need for injunctive relief is further demonstrated by Peter Hendrickson's 1992 conviction for willfully failing to file an income tax return. *Docket* #9 at 19, fn 6.

Accordingly, the district court should grant Plaintiff's request to enjoin Defendants from "filing any tax return or amended return with the IRS that is based on the claim that only federal, state or local government workers are liable for the payment of income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws." *In re Dow Corning Corp.* 280 F.3d 648, 657 -658 (6th Cir. 2002); *United States v. First National City Bank, supra,* 568 F.2d at 855-856; *See also U.S. v. Hill,* 2005 WL 3536118, *9 (D.Ariz. 2005) (Permanently enjoining Defendants from "[e]ngaging in ... conduct that they know will interfere with the administration and/or enforcement of the internal revenue laws.")

As discussed above, "the broad range of powers" contemplated by IRC § 7402(a) encompass Plaintiff's request to require Defendants to amend their 2002 and 2003 tax returns to reflect the information shown on Form W-2 for those years. However, in

light of this Court's finding that Defendants are liable for the funds erroneously issued for those tax years plus interest, requiring Defendants to submit corrected tax returns would be superfluous; thus that portion of Plaintiff's request for injunctive relief should be denied as moot.

IV. CONCLUSION

For the reasons set forth above, I recommend that:

1. Plaintiff's motion be GRANTED as to recovery, with interest, of the erroneously issued refunds in the amount of $20,380.96, and that judgment enter in that amount in favor of the Plaintiff.

2. Plaintiff's motion as to the request for injunctive relief, enjoining Defendants from "filing any tax return or amended return with the IRS that is based on the claim that only federal, state or local government workers are liable for the payment of income tax or subject to the withholding of federal income, social security and Medicare taxes from their wages under the internal revenue laws" be GRANTED.

3. Plaintiff's request for injunctive relief requiring Defendants to file corrected amended Form 1040 tax returns for the 2002 and 2003 tax years should be DENIED AS MOOT.

Any objections to this Report and Recommendation must be filed within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *Howard v Secretary of HHS*, 932 F.2d 505 (6th Cir. 1991);

United States v Walters, 638 F.2d 947 (6th Cir. 1981). Filing of objections which raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. *Willis v Secretary of HHS,* 931 F.2d 390, 401 (6th Cir. 1991); *Smith v Detroit Fed'n of Teachers Local 231,* 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

S/R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE
Dated: February 8, 2007

DEFENDANTS' RESPONSE TO THE MAGISTRATE'S "REPORT AND RECOMMENDATION" REGARDING THEIR MOTIONS TO DISMISS AND FOR OTHER RELIEF

BACKGROUND

On June 23rd, 2004 and September 15th, 2004 the Internal Revenue Service, Secretary of the Treasury and the Attorney General of the United States, filed suit against Defendant(s) under the guise

of investigating "the promotion of abusive tax shelters" pursuant to I.R.C. § 6700, which were subsequently withdrawn upon Answer. The purpose of those earlier failed actions was the plain suppression of information the Plaintiff finds it inconvenient for American citizens to have. The instant action is another such attempt, with the added purpose of intimidating into paralysis the vast number of Americans who have already come into possession of this information.

The simple fact is, Defendant Peter Hendrickson has exhaustively researched the depths of the income tax laws and learned the liberating truth about the tax. At the same time, he also learned the disturbing truth about how general ignorance of those depths is exploited by an utterly unscrupulous, very nearly lawless Internal Revenue Service to apply the tax where no taxable activity has actually been engaged in, and to collect money with no more connection to the income tax system than that its proper owners have been gulled into declaring it to be subject to the tax, in perfect ignorance of the legal effect of every step they take in the process. Applying his new knowledge, Hendrickson promptly became the first American in history to receive the return of every penny withheld from him and paid over to the federal government against the possibility of an income tax liability-- Social Security and Medicare taxes included.

Defendant Peter Hendrickson also wrote a book, sharing his new knowledge of the reality of the law and of the intricacies of the scheme to exploit ignorance about that law. That book, 'Cracking the Code- The Fascinating Truth About Taxation In America', is now in the hands of Americans all across

the country (and is being read by freedom-loving and rule-of-law-respecting people in many other countries, as well). Since the book's publication 3 ½ years ago, thousands of Americans have acted on the knowledge it reveals and have also claimed and received the return of every penny withheld from their often very considerable earnings and given over to the federal government against the possibility that an income tax liability might prove to exist at the end of the year.

Readers who have acted on their now comprehensive and accurate understanding of American income tax law come from all walks of life, including doctors, lawyers, CPAs teachers, truck drivers, nurses, IT specialists, and every other variety of productive person. The single-year amounts reclaimed by these good folks of which Defendants are aware (and evidences of which are posted on Defendant Peter Hendrickson's website, www.losthorizons.com) range from more than $168,000 (withheld from correspondingly high earnings) down to as little as $1.

Many of those who have learned the truth by reading this book have claimed and enjoyed the return of property withheld from them year after year now, and many have gone back as far as the law allows to reclaim property invalidly withheld from them in years past. Many more readers of this unique book have had no withholding to reclaim, but have used their knowledge of the law to legally establish and record the fact that they owe no tax on their earnings, and have secured IRS documentation acknowledging the same. Twenty-two state and local governments now routinely return all withheld property to readers of 'Cracking the Code- The

Fascinating Truth About Taxation In America' as well.

The purpose of this bogus "lawsuit" is nothing more and nothing less than to discourage other Americans from equipping themselves with the knowledge of the law revealed in 'Cracking the Code-...' (and the power that knowledge gives); and to discourage those already so equipped from freely and accurately testifying on, and by way of, their own income-tax-related legal instruments. This purpose is expected to be accomplished by the implicit threat to all such Americans that should they gain and act upon this knowledge, they too might be victimized by a legally unsound, but burdensome and obnoxious "lawsuit" of the same sort as that to which Defendants are now being subjected.

That this is so is made perfectly clear by any honest review of the facts and filings in this case, and by the simple fact that despite the Plaintiff's legally meaningless, non-testimonial, but nonetheless endless repetitions of "false and fraudulent" in regard to Defendants' claims for the return of their property in the instant action, Plaintiff continues-- to this very day-- to quietly honor precisely the same kind of claims. The most recent such honored claim of which evidence was posted on losthorizons.com was dated by the Internal Revenue Service on February 5, 2007-- THE VERY DAY MAGISTRATE WHALEN SIGNED HIS "REPORT AND RECOMMENDATION"!

Indeed, in the time since the Plaintiff filed this "lawsuit" with great fanfare, national press releases, and carefully affected dudgeon, it has-- as quietly as it has been allowed to do so-- returned, or, by notice, formally abandoned its own previously asserted interest in well over $600,000.00 in response to

precisely the same kind of claims as those made by the Defendants and which the Plaintiff so hyperbolically assails in the instant action. This amount only reflects that portion of the greater total of which evidence has been graciously and courageously made public by the claimant for the benefit of the American people; further, this amount does not include the total value of straightforward, immediate IRS acknowledgements, in cases in which nothing had been withheld, of no tax owed or owing.

An untold multitude of such claims are routinely being received and honored by the Plaintiff at all times now, a fact which, by itself, puts the lie to Plaintiff's corrupt efforts in this instant action. Plaintiff's concrete behavior each and every day reflects its own acknowledgement of the accuracy of the information which it wishes to suppress, as does its pretense of disputing and disparaging that information throughout its filings in this case while actually only disputing and disparaging a deliberate misrepresentation thereof. It is hard to conceive of more powerful evidence of bad faith. There IS fraud involved in this case-- it is the fraud the Plaintiff is attempting to perpetrate upon this Honorable Court.

Happily, the same evidence that emphasizes the Plaintiff's bad faith also emphasizes that its corrupt effort is, and will remain, a failure. American men and women are not the timid little creatures the Plaintiff wishes they would be, and are not dropping their eyes in the face of the Plaintiff's threats. This is no surprise. American men and women are <u>not</u> timid. More to the point, American men and women are honorable, and as inconvenient as it may be to Plaintiff's purposes, once someone honorable has learned the truth, there's no going back to the lie.

RESPONSE

DEFENDANTS GENERALLY AND COMPREHENSIVELY OBJECT TO THE MAGISTRATE'S RECOMMENDATIONS

We are instructed in the Magistrate's filing that this response is our opportunity to object individually and specifically to each aspect *of his recommendation,* or forfeit future opportunities to do so. We take this as written, and presume that our response here does not compromise or affect in any way our opportunities to object to, or appeal, the actual district court ruling on our motions when they are issued. We WILL nonetheless endeavor to respond to the magistrate's recommendations individually and specifically here as best we are able, but, given the constraints of permitted response length, the fact that the Magistrate has blended numerous disparate elements into certain subdivisions of his recommendations in a highly confusing manner, and the fact that unlike the Plaintiff in this action, we do not have a staff of attorneys paid with other people's money to write instruments like this one full time, we will also state for the record that we broadly and comprehensively object to each and every conclusion reached and recommendation made by the Magistrate, and, insofar as is possible under whatever doctrine or rules govern responses of this kind, incorporate into this response by reference each and every point, argument and piece of evidence included or referenced in all of our filings already on record with the with the court in connection with this action thus far.

SPECIFIC OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS

Regarding Recommendation Subpart A

Magistrate Whalen dwells on the issue of "subject matter" jurisdiction at some length, but in doing so largely misses the point of our motion in regard to jurisdiction. The chief issues therein are that the Plaintiff has brought this action explicitly claiming jurisdiction under the provisions reflected at 26 USC 7405 which provide (and impose generally) that a suit of this kind can only be brought in connection with an erroneous refund of tax; and that the remedy explicitly sought by the Plaintiff is a change in Defendants sworn testimony by means of coercion, and an injunction to the same effect into the future.

We also took issue with the gratuitous adoption by the Plaintiff of the dignified title of "United States of America", due to the fact that the nature of its complaint makes clear that it is nothing but an outfit based in DC alleging (wrongly) to have had a business relationship with us under the terms of which it claims entitlement to some of our property; and due to the fact that the statutes under which it is acting clearly and unambiguously instruct it to use the more prosaic and accurate "United States". We will spend no more time addressing Magistrate Whalen's recommendations in regard to that aspect of our combined motion other than to reiterate what we have already expressed in earlier filings: If, as the Plaintiff asserts in its reply to our motion, there is no difference between the two names, we can see no reason for Plaintiff to not follow the letter of the law and bring actions such as this one in the specified name of "the United States".

As to the other points: Contrary to what Magistrate Whalen appears to believe, the existence of an income tax debt is not determined, and allegations of such a debt are not supported, merely because a clerk like Kim Halbrook in a "Human Resources" department says she has seen records alleging payments which partake of a particular legal character to someone else. An income tax debt is determined by an explicit legal process usefully summarized for purposes of this case by the following statutory language:

> *Section 93 of The Revenue Act of 1862*
> *"Sec. 93. And be it further enacted,...that any party, in his or her own behalf,...shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ...the amount of his or her annual income,... liable to be assessed,... and the same so declared shall be received as the sum upon which duties are to be assessed and collected."*

That the process specified in this statute remains intact and in force is illustrated by the following IRC and CFR sections:

> *26 USC § 6201*
> *(a) Authority of Secretary*
> *The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at*

the time and in the manner provided by law. Such authority shall extend to and include the following:

(1) Taxes shown on return

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

6 CFR 301.6203-1 Method of assessment.

...The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, be the amount so shown...

This process has been scrupulously adhered to in matters concerning the instant case, and has resulted in a conclusive legal determination by both the Defendants AND the Plaintiff that Defendants owe the Plaintiff nothing. The same process resulted in a conclusive legal determination by both the Defendants AND the Plaintiff that Plaintiff owed Defendants the return of all of the Defendants' property that had been put into its keeping against the possibility of a tax debt to Plaintiff having arisen during the years involved.

It is not necessary to go into what it is that causes an income tax debt to the federal government to arise in the first place, here and now. Absent an assessment of tax, there is no debt; further, having not been determined to have been so pursuant to the process outlined in the law (by either the Defendants OR the Plaintiff), the amounts withheld from, and returned to, Defendants in the instant case were not, and cannot be characterized to have been, amounts of "tax". Consequently, Plaintiff can allege no offense

(which would have no proper place in a civil action of this kind in any event), and has no claim to pursue, no remedy to seek, nor jurisdiction to invoke.

Further, as has been elaborately observed in our motion (the relevant content of which is again incorporated herein by reference), it is only by a change in the testimony on our return that a lawful claim in favor of the Plaintiff could arise. This simple fact is made unambiguously clear by the law cited above, and is implicitly acknowledged quite clearly by the Plaintiff itself, by way of its utterly corrupt proposal to the court to coerce such a change from us retroactively, and its prayer to the Court to the same effect regarding our future testimony. As this "remedy" cannot be afforded to the Plaintiff, Plaintiff has failed to state a claim for which relief can be granted. When a court is unable to afford the relief sought, it has no jurisdiction, regardless of any other aspect of the matter in question.

The magistrate goes on to make the bizarre suggestion that we assert that we are not obligated to pay income taxes in some generic sense. We are at a complete loss as to how this notion was arrived at. We are certainly obliged to pay income taxes when and if we engage in activities under which such tax obligations can arise, just as is true of anyone else. The fact that we had no such obligations for the years involved in the instant case does not mean that we can never have such obligations, and nothing we have said suggests the contrary. We don't happen to owe J.C. Penney any money right now, either, but we certainly might in the future.

Magistrate Whalen continues with equally mystifying comments to the effect that we refuse "to acknowledge the existence of the "United States of

America", and that under this incomprehensibly ascribed belief we imagine ourselves able to "skirt [our] tax obligations"?! Again, we are at a complete loss, having said, suggested or implied no such things. We fear Magistrate Whalen may have mixed our filings up with those of some kind of "tax protestor".

Regarding Recommendation Subpart B

Reporting $0.00 in "wages" on a 1040 does not amount to fraud-- the very proposition is as ridiculous as the implied proposition that everyone everywhere, and in every year, has received "wages". A failure to adopt the testimony of an "information return" preparer on one's tax return does not amount to fraud either, although this (and the preceding) is Plaintiff's (and apparently Magistrate Whalen's) intended meaning in the deployment of the term "fraud". More broadly put, Plaintiff intends it to be understood that the assertions of others as to the legal character of our receipts (and the amounts thereof) are dispositive as to that legal character, and thus our failure to adopt those assertions constitutes "fraud".

The relevant statutory language (which we presented in our response to Subpart A of the Magistrate's recommendations and which we incorporate here by reference) makes clear that this is simply not the case as a matter of law. Further, it cannot be the case, as a matter of principle-- the fact that to ADOPT someone else's testimony on a tax return DOES constitute a crime; and the fact that for anyone to suggest that some penalty, legal infirmity, or vulnerability to suit attends a failure to testify to ANYTHING other than the filer's own knowledge and belief is also a crime, serve to illuminate this principle.

"Fraud" in the context of a tax return consists of the creation of false expense receipts and the like, on the basis of which deductions to which one is not legitimately entitled are claimed. Claiming a refund of more than was actually withheld (or was withheld from another) could also amount to fraud, of course, but claiming a refund of what WAS withheld against a possible tax liability that did not, in fact, arise, cannot.

If Plaintiff wishes to allege "fraud" (and leaving aside the issue of whether the instant action is the proper place to be doing so, or the question of whether such allegations are simply being deployed as a pretext to give color to its claim of legitimacy in bringing this action at all, which is clearly the case), it must produce the "fraudulent instruments" and explain with particularity the evidence upon which it relies in asserting that such instruments are fraudulent.

We are at a loss to imagine what the Plaintiff might cast about for in this regard. The Plaintiff's own sole "witness", Kim Halbrook (upon the legitimacy and pertinence of whose testimony that of all other testimony Plaintiff has presented throughout the conduct of this case so far is entirely dependent) asserts that the amounts withheld from Defendant Peter Hendrickson were precisely as reported on the Forms 4852 which Plaintiff makes so much of in its complaint. Thus, there is no dispute whatsoever as to those amounts, or that they were indeed withheld from the Defendants.

The only other instrument attached to, or incorporated within, Defendants' tax returns were affidavits from Defendant Doreen Hendrickson rebutting testimony made on, and by way of, 1099

"information returns" created about her, and in connection with which no amounts had been withheld, or were reclaimed. No deductions or exemptions were taken on the returns at all (the standard automatic deduction and personal exemptions were noted on the returns, but had no actual application, as the amount of income received was below the minimum tax threshold anyway, and require no documentation in any event).

Magistrate Whalen quotes the non-testimonial rhetoric of the Plaintiff in this subpart of his recommendation regarding our reporting *"'zero' or no wages"*, and to the effect that we *"reported, incorrectly, federal income tax withheld..."*, but this rhetoric is nothing more than just that. He asserts that "Plaintiff has provided an abundance of information to support its allegations of fraud", but we see nothing but the bare, unsupported allegations.

Regarding Recommendation Subpart C

In this subpart, Magistrate Whalen addresses our request that, should this "lawsuit" not be dismissed on one or more of the grounds previously discussed, the Court order stricken from the complaint:

> *a. The pejorative term "bogus" in paragraph 7.*
> *b. The pejorative term "brags" in paragraph 8.*
> *c. The frivolous phrase "tax fraud promotional materials" in paragraph 18.*
> *d. Paragraph 30 in its entirety.*
> *f. The fraudulent and misleading words "of America" appended to "United States in the first sentence of paragraph 32.*

In doing so, we observed that:

The foregoing terms, paragraph and words are included by the government solely to malign the Defendants and inflame the passions (against Defendants) of any person who happens to read the complaint. Furthermore, they are irrelevant, immaterial, impertinent, scandalous and without any basis in law or fact.

In response to Magistrate Whalen's recommendation, we simply reiterate the above, and particularly as regards "Paragraph 30". It is not necessary to discuss the gross misrepresentations of the events of 17 years ago of which that paragraph consists to make clear to any objective consideration that this paragraph contains nothing relevant to Plaintiff's asserted claims, and that this paragraph is included solely to do just what we say in our motion--prejudice a reader of this complaint against us, as well as to serve the real purpose of this "lawsuit", which is to function as a corrupt "public relations" tool.

Regarding Recommendation Subpart D

Finally, Magistrate Whalen addresses our request for sanctions under Fed. R. Civ. P. 11, in which we say:

Attorneys for the government, namely Stephen J. Murphy, III, William L. Woodard, Robert D. Metcalfe, Anne Norris Graham, and Stephen J. Schaeffer have made the following false representations, under signature, to the Court in their Complaint in Violation of FRCP Rule 11:

a. That the Hendricksons were issued refunds of "taxes".

b. That Peter Hendrickson asserts that the

payment of federal taxes is voluntary.

c. *That Peter Hendrickson asserts that "wages are not income".*
d. *That Peter Hendrickson asserts that "only federal workers are required to pay income taxes";*
e. *That Peter Hendrickson asserts that "wages and income for federal income tax and withholding purposes means only wages and income of government employees".*
f. *Every assertion that Peter and Doreen Hendrickson did anything false or fraudulent.*
g. *That Peter Hendrickson has been or is involved with tax-fraud promotion.*

Furthermore, the government has commenced this action for an improper purpose and to harass the Defendants. The allegations detailed in paragraph 12 are not factual and have no evidentiary support.

In response to the Magistrate's recommendation we reiterate this declaration and request verbatim, and, in regard our item "a." above, direct the Court's attention to our relevant discussion in this response and our previous filings. In regard to item "b.", we offer for the Court's attention the very first three sentences of 'Cracking the Code- The Fascinating Truth About Taxation In America':

> Let's get this said loud and clear right at the outset: IF YOU HAVE TAXABLE INCOME, YOU ARE SUBJECT TO THE INCOME TAX. Section 1(a) of the Internal Revenue Code says:

"There is hereby imposed on the taxable income of-... [a tax of varying percentages]" Pretty straightforward.

Regarding items "c.", "d." and "e." we offer for the Court's attention the following from page 75 of 'Cracking the Code- The Fascinating Truth About Taxation In America':

Sec. 3401. - Definitions

(a) ***Wages***

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an ***employee*** *for his employer,...*

c) ***Employee***

For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation. [A "United States Corporation", defined in Sec. 207 of the Public Salary Tax Act as, *"a corporate agency or instrumentality, is one (a) a majority of the stock of which is owned by or on behalf of the United States, or (b) the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States..."*. However, we are instructed by the IRS in Pub. 15A that such officers are only to be considered "employees" if

they are paid as a consequence of their positions.]

...from page 77:

Sec. 3121. - Definitions
(a) ***Wages***
For purposes of this chapter, the term "wages" means all remuneration for ***employment****, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include* - ... [various pre-tax deductions]
(b) ***Employment***
For purposes of this chapter, the term "employment" means any ***service****, of whatever nature, performed*

(A) by an employee for the person employing him, irrespective of the citizenship or residence of either,

(i) ***within the United States****, or*

(ii) on or in connection with an American vessel or American aircraft... or

(B) outside the United States by a ***citizen or resident of the United States*** *as an employee for an* ***American employer*** *(as defined in subsection (h)),...*

(e) State, United States, and [Puerto Rican] *citizen*
For purposes of this chapter -
(1) State

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States

*The term "United States" **when used in a geographical sense** includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.*

...

*h) **American employer***

For purposes of this chapter, the term "American employer" means an employer which is -

(1) the United States or any instrumentality thereof,

*(2) an individual who is a **resident** of the United States,*

*(3) a partnership, if two-thirds or more of the partners are **residents** of the United States,*

*(4) a trust, if all of the trustees are **residents** of the United States, or*

(5) a corporation organized under the laws of the United States or of any State.

...and from page 89:

We have also seen that the amount of taxable activity engaged in is measured by the receipts it produces, which are themselves misleadingly referred to as "income", and are treated, for all practical purposes, as the thing being taxed. (The convention is meaningless as far as how

much tax is paid, but it contributes to the scheme by producing the appearance that the law lays a tax on the receipt of money). Thus, another way of summarizing what is taxed would be:

> *Remuneration for services (either immediate or deferred)-- or benefits-- paid by the federal government, its agencies, instrumentalities and "State" governments;*

and,

> *The proceeds of, and from, federal corporations and instrumentalities (such as those listed above, as well as national banks, railroads, etc.); and the proceeds of, and from, the conduct of a "trade or business".*

Since it is clearly pointed out on pages 75 and 77 that "wages" include remuneration paid to federal workers, and on page 89 that "income" includes remuneration paid to federal workers, among other things, it is clear that Defendant Peter Hendrickson does not say that *"wages are not income"*. The excerpt from page 89 also makes clear that Defendant Peter Hendrickson does not say that *"only federal workers are required to pay income taxes"* or that *"wages and income for federal income tax and withholding purposes means only wages and income of government employees"*. Further, these are only the simplest and most concise examples available-- both the book and the hundreds of thousands of additional words the Defendant has written on this subject are liberally salted with additional examples of the same.

Regarding item "f.", we can only refer the Court's attention to our various affidavits submitted into the record of this proceeding, the complete failure of the Plaintiff to substantiate any of its scurrilous assertions, and the fact that when our filings were given due consideration against both the W-2s issued by Personnel Management and the 1099s issued by Una Dworkin prior to the conception of this public relations "lawsuit", they were found to be perfectly correct in every particular, resulting in the correct conclusion that we owed, and owe, no tax for the years involved. The Plaintiff's hyperbolic fulminations here notwithstanding, that conclusion remains unaltered to this day, as is evidenced by the official Certificates of Assessment which have been entered into the record of this proceeding.

Regarding item "g.", Plaintiff has on three separate occasions-- two of them in this very district-- moved the Court to dismiss actions it had previously commenced alleging the Defendant Peter Hendrickson was involved in "the promotion of an abusive tax shelter". We believe that this adequately establishes that Plaintiff is acting improperly, abusively and contrary to its own knowledge of the truth in using the phrase "tax-fraud promotion" in its filings.

CONCLUSION

In conclusion, Defendants once again ask this Honorable Court to:

a) Dismiss this Complaint for lack of jurisdiction
b) Subject to a ruling on a), order the Plaintiff to re-plead in conformity with Defendants Motion

For A More Definite Statement as detailed in paragraphs 14 and 15.

c) Subject to a ruling on b), order Plaintiff to re-plead in conformity with Defendants' Motion To Strike as detailed in paragraphs 16 and 17.
d) Take Notice of the Violations of FRCP Rule 11 by Plaintiff as detailed in paragraphs 18 and 19.
e) Grant Defendants such other relief, including the costs of this action, as is just and equitable.

Dated this the 15th day of February, 2007

Respectfully submitted

_____

Peter Eric Hendrickson

_____

Doreen M. Hendrickson
232 Oriole Rd.
Commerce Twp, Michigan 48382
(248) 366-6858

DEFENDANTS' RESPONSE TO THE MAGISTRATE'S "REPORT AND RECOMMENDATION" REGARDING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

BACKGROUND

On April 12, 2006, Plaintiff commenced an action against Defendants for the purpose of suggesting to the already large and rapidly growing host of Americans who have read Defendant Peter Hendrickson's book, 'Cracking the Code- The Fascinating Truth About Taxation In America', that if

those readers act on the obviously accurate information about the law contained in the book by knowledgably filing honest and proper tax return instruments (the consequence of which is, in most cases, to foreclose any claim by the Plaintiff to the filer's property), these Americans might themselves be targeted by a similar abusive and burdensome "lawsuit". It is the Plaintiff's preference that these Americans should perjure themselves on any tax forms filed or stand silent in the face of the testimony of others about their receipts-- thus foregoing the opportunity provided by law and the most basic principles of due process to assert a claim to their own withheld or paid-in property in relevant cases, and effectively endorsing a competing claim against themselves and their property by the Plaintiff.

Defendants, pursuant to the Federal Rules of Civil Procedure, promptly and properly moved this Honorable Court to dismiss the action on various grounds, including jurisdictional grounds. Among much else, Defendants pointed out that Plaintiff's prayer that the Court command the Defendants to change their sworn testimony on the tax returns they executed in connection with the years 2002 and 2003, is a remedy not available to the Court. Plaintiff had doubtless included this prayer as a fundamental element of the remedy it sought in an unconscious acknowledgement of the fact that by law it can only assess and collect amounts shown as tax on a return. The fact that coerced testimony on a return would be invalid, and thus ineffective to this corrupt purpose, had escaped Plaintiff in its haste to announce its "lawsuit" before "tax day".

Because a court unable to offer a remedy sought is automatically without jurisdiction,

Defendants' response to the "coerced testimony" prayer in Plaintiff's hastily contrived mummery of a suit was fully dispositive of this "lawsuit" by itself. It is also impossible for the Plaintiff to defend. However, rather than abandon its corrupt purpose after belatedly recognizing the tangled weave being generated by its efforts to deceive, Plaintiff decided instead to attempt to "game the system". On July 13, 2006, Plaintiff submitted to the Court a Motion for Summary Judgment-- purporting to concern the "lawsuit" it had commenced against the Defendants, but in which Plaintiff abandoned its prayer for retroactive witness-tampering, In so doing, Plaintiff is seeking to effectively get a "bite at the apple" to which it is not entitled, in the sense of filing yet another brief in the action beyond the initial "complaint" and the single response to our motions to which it is entitled under the rules of civil procedure; to bypass the Court's ruling on our motions, which would preclude any opportunity for a motion for summary judgment of any character or content; and to dismiss its own complaint and re-file another, while dodging the various inconveniences of admitting (or having it made clear) that its initial complaint was a complete contrivance hastily filed in the grossest of bad faith for the corrupt purpose of intimidating the American public five days before the deadline for tax filings in 2006.

RESPONSE

DEFENDANTS GENERALLY AND COMPREHENSIVELY OBJECT TO THE MAGISTRATE'S RECOMMENDATIONS

We are instructed in the Magistrate's filing that this response is our opportunity to object individually and specifically to each aspect *of his recommendation,* or forfeit future opportunities to do so. We take this as written, and presume that our response here does not compromise or affect in any way our opportunities to object to, or appeal, the actual district court ruling on our motions when they are issued. We WILL nonetheless endeavor to respond to the magistrate's recommendations individually and specifically here as best we are able, but, given the constraints of permitted response length, the fact that the Magistrate has blended numerous disparate elements into certain subdivisions of his recommendations in a highly confusing manner, and the fact that unlike the Plaintiff in this action, we do not have a staff of attorneys paid with other people's money to write instruments like this one full time, we will also state for the record that we broadly and comprehensively object to each and every conclusion reached and recommendation made by the Magistrate, and, insofar as is possible under whatever doctrine or rules govern responses of this kind, incorporate into this response by reference each and every point, argument and piece of evidence included or referenced in all of our filings already on record with the court in connection with this action thus far.

Further, we object generally to any consideration of Plaintiff's "Motion for Summary Judgment". It is our understanding that until jurisdictional challenges have been settled, such motions are untimely, even when not made in bad faith. As the United States Supreme Court has observed, unambiguously and repeatedly:

> "[Jurisdiction] *must be considered and decided, before any court can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction."*
> *State of Rhode Island v. Com. of Massachusetts, 37 U.S. 657 (1838)*

In addition to other jurisdictional issues raised in our motions, nothing presented by Plaintiff but the testimony of Kim Halbrook even purports to establish that this case concerns the income tax laws, or that Plaintiff has any claim to pursue at all, and Halbrook's testimony is explicitly controverted both throughout Defendants' motions, briefs, responses and affidavits of all varieties previously introduced into the record of this case and by the additional affidavit attached to this response as well; in any event, our jurisdictional challenges have yet to be ruled upon by the Court.

Thus, we do not intend this response, nor that filed in September of 2006 to Plaintiff's filed motion, to be taken as endorsing or acknowledging the legitimacy, propriety or timeliness of the motion, although we do affirm and intend the introduction as evidence of the affidavits submitted directly and by reference with that earlier response, and the affidavit by Defendant Peter Hendrickson attached to this response, into the record of this case.

SPECIFIC OBJECTIONS TO THE MAGISTRATE'S RECOMMENDATIONS

A.

Magistrate Whalen begins to misconstrue early in his "Report and Recommendation". Within the

"Facts and Procedural Background" section of his report, the Magistrate says:

"Defendants attached a form 4852 ("substitute for Form W-2 Wage and Tax Statement") reporting that he had received no wages for 2002, but apparently citing Defendant Peter Hendrickson's W-2 form, which stated that $5,642.20 had been withheld in income taxes; $3,655.83 in social security taxes, and $854.93 in Medicare taxes. Id. at Exhibit 1, Attachment 1; Exhibit 2, Attachment 1. Defendant Peter Hendrickson included the following explanation for his failure to produce a form W-2:

> *"Request, but the company refuses to issue forms correctly listing payments of 'wages as defined in 3401(a) and 3121(a)' for fear of IRS retaliation. The amounts listed as withheld on the W-2 it submitted are correct, however."*

Since the words written on the Form 4852 by Defendant Peter Hendrickson, which Magistrate Whalen quotes, explicitly refer to "the W-2" submitted, there is no possibility that the Magistrate means that reference when he says "apparently citing...". It is therefore obvious that the Magistrate means to imply that Defendant Peter Hendrickson RELIED upon the Form W-2 in determining amounts withheld in his use of that language. Presumably this misconstruction is intended to suggest that the W-2 is being declared true on the one hand and false on the other, as suits the Defendant's purposes, and that therefore the Defendant's testimony that certain declarations made on the form are incorrect should be viewed with suspicion, at least. Indeed, in a footnote on Page 7 of Magistrate Whalen's report, he says as much more-or-less explicitly.

However, even if the magistrate's preferred misconstruction were sound, it would be the equivalent of attempting to impeach the testimony of a man who loses his wallet and who, when it is found and returned to him, disagrees with the fellow who returned it as to how much money had been inside, despite both of them agreeing about where and when the wallet was lost. Further, and in any event, the actual content of the Defendant's words on the W-2 is directly contrary to Magistrate Whalen's misconstruction. To declare that "The amounts listed as withheld on the form W-2 it submitted are correct..." is to declare that those amounts have been INDEPENDENTLY verified as accurate. Indeed, this language can have no other meaning.

Magistrate Whalen goes on in a similar vein, incorporating misleading language over and over again throughout his report, effectively and, in our view, improperly adopting as established matters merely alleged by Plaintiff, and explicitly disputed by Defendants in their briefs, motions, responses and affidavits filed in this case. He refers, for instance, to Personnel Management, Inc. as Defendant Peter Hendrickson's "employer". Within the context of the instant action, "employer" has an explicit legal meaning, and the legitimacy of applying the term to Personnel Management, Inc. is among the substantive elements of this case and has considerable relevance to other substantive elements thereof. Under the Federal Rules of Civil Procedure, in the case of a motion for summary judgment all such matters must be viewed in a light most favorable to the non-moving party. Consequently, Personnel Management, Inc. must be viewed as NOT being Defendant Peter Hendrickson's "employer" in considering this motion.

Similarly, Defendant Peter Hendrickson must be viewed as NOT being an "employee" and his earnings must be viewed as NOT being "wages".

Magistrate Whalen also explicitly misrepresents our testimony and arguments. On page 7 of his report, for instance, he declares that we acknowledged *"that these amounts* [portions of the property we reclaimed] *were either applied to earlier tax liabilities..."*. We did no such thing, but on the contrary, explicitly testified in the affidavit included in support of our motions to dismiss and for other relief that:

> *"We deny the allegations in the government's complaint, particularly in paragraphs 10, 12, 19, 20 and 23, to the effect that lawfully-determined liabilities existed against us for the years 2000 and 2001 to which portions of what we claimed as "overpayments" for 2002 and 2003 were diverted."*

Magistrate Whalen goes on to discuss the assertions of Shauna Henline and "Terry Grant the Mystery Bureaucrat", but these assertions are meaningless. The contentions of both "Grant" and Henline are mere idle speculations, and utterly irrelevant, in the face of any challenge to the assertions of Kim Halbrook. Only if "wages" as defined in the relevant law have been paid do the ruminations of "Grant" and Henline about the proper care and feeding of taxes which only arise from, and are measured by, the payment of such "wages" become relevant. Plaintiff has by no means established that such "wages" were paid. The only "evidence" Plaintiff proffers in this regard is the testimony of Kim Halbrook, and that testimony has

been explicitly rebutted by sworn testimony on our 1040s and related instruments, as well as our filings and other affidavits introduced into the record of these proceedings so far. Furthermore, as we have observed in previous filings in this case, Kim Halbrook actually has no relevant personal knowledge about payments made to Defendant Peter Hendrickson, an observation which we now more explicitly introduce into the record of these proceedings by means of the affidavit attached to this response.

The sum of all this is that Plaintiff cannot prevail based on the evidence, and beyond, and additional to, that simple fact is that Plaintiff cannot prevail due to the operation of law, either. The law explicitly provides that a sworn tax return serves as a dispositive answer to the contentions made on "information returns" such as W-2s and 1099s:

> *Section 93 of The Revenue Act of 1862*
> *"Sec. 93. And be it further enacted,...that any party, in his or her own behalf,...shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ...the amount of his or her annual income,... liable to be assessed,... and the same so declared shall be received as the sum upon which duties are to be assessed and collected."*

That the process specified in this statute remains intact and in force is illustrated by the following IRC and CFR sections:

> *26 USC § 6201*
> *(a) Authority of Secretary*

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(2) Taxes shown on return
The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

6 CFR 301.6203-1 Method of assessment.
...The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, be the amount so shown...

Further, there is, of course, no provision of law whatsoever for the "information return" preparer to weigh in again, in response to, or dispute of, the return filed pursuant to the legislation noted above. Were there to be such a provision, it would obviously be in direct conflict with that legislation. Plaintiff has no such authority, either. While Plaintiff may be provided a limited authority to subsequently raise issues as to the accuracy with which the proper rate of tax was applied to the amount of income reported on such a return, or as the propriety of deductions which may have been taken, there is no provision under which Plaintiff may dispute or take issue with the declaration on the return as to the amount of income

received. This is a simple matter of rational necessity. As in the case of the "information return" preparer, were such a provision to be proposed, it would clearly conflict with those noted above. Besides, even if this were not so, other than in the few instances in which Plaintiff is itself the "information return" preparer, it is possessed of no personal knowledge of the matters involved whatsoever, and thus would lack standing to relevantly testify, or even merely aver, in any event.

B.

Magistrate Whalen proceeds to hold forth with regard to Plaintiff's modified prayer that this Honorable Court dictate the sworn testimony on tax returns Defendants may have occasion to execute in the future. As noted in our "Background" summary above, Plaintiff has attempted to abandon its initial prayer that the Court dictate what we are to swear to on our tax returns retroactively, but persisted in its corrupt and, frankly, incomprehensible request for the same legally self-defeating (and thus, unavailable) "relief" in the "motion for summary judgment" at issue here. Little more need be said about this-- to state the proposition is to answer it.

We will, for the sake of thoroughness, observe that the Magistrate appears to adopt without question Plaintiff's fraudulent (that is, deliberately wrong and misleading) characterization of the knowledge and understanding reflected in the testimony on our returns, even going so far as to quote Plaintiff's mischaracterization as though its assertions stand as established fact, but this is immaterial to the fundamental issue here.

We will also observe that Magistrate Whalen repeats by implication the ridiculous lie presented by

Plaintiff to the effect that Plaintiff's return of our property was done as a result of subterfuge. This lie is used by both Plaintiff and the Magistrate as a pretext for arguing that unless Defendants are enjoined, Plaintiff will surely be "fooled" again (or be put to extraordinary expense and trouble to avoid being "fooled"). As we pointed out in our direct response to Plaintiff's motion,

> *"Finally, the "contest" regarding the virtues and significance of Halbrook's assertions has already taken place, and the Plaintiff's argument lost. The Plaintiff strains mightily to suggest to this honorable Court that the government was induced to issue the refunds of Defendants' property that Plaintiff wishes to have back by being misled, due to the Treasury Department and IRS's well-known Pollyanna-like demeanor, and practice of relying without question on the presentations of persons like us on our tax returns. Not only is this a proposition best suited for Jay Leno's evening comedy routine, but it is an outright lie to this honorable Court.*
>
> *Even Kim Halbrook's declaration reports that the records at Personnel Management indicate that its side of the story was duly transmitted to the IRS in a timely fashion, meaning that the return of Defendant Peter Hendrickson's deposited property took place after proper consideration of what the Plaintiff would have us all imagine Halbrook's declaration asserts. For that matter, Defendant Peter Hendrickson's sworn Form 4852s, submitted as part of Defendants' returns for each year, explicitly point out to the government*

that Personnel Management had issued W-2s not in agreement with the testimony on those form 4852s. The documents prepared by Defendant Doreen Hendrickson rebutting the 1099s created by Una Dworkin do the same with regard to those 1099s. Furthermore, the refunds issued as a result of Defendants' proper and lawful claims did not spring forth upon the receipt by the IRS of Defendants' tax returns. Months went by between the two events-- months during which the IRS repeatedly corresponded with Defendants on the subject of these refunds, including an initial refusal to issue the refund for 2002 without further information.

In short, the government had all the evidence, processed all the evidence, applied and obeyed the law, and issued refunds accordingly. The bad faith reflected in Plaintiff's effort to suggest otherwise is mind-boggling, and stomach-turning."

The Magistrate continues echoing the Plaintiff in suggesting that a failure to enjoin the Defendants risks "encouraging" other Americans to also file tax returns which accurately and honestly express their freely made testimony as to what is true, correct and complete to the best of their own knowledge and belief, as opposed to mindlessly (and thus, perjuriously) adopting the testimony of others. In doing so, Magistrate Whalen lays bare, for any honest eye to see, the true purpose of Plaintiff's "lawsuit". Plaintiff has no lawful interest in Defendants' property and never did, as has been made clear by its complete failure to prove any such interest. But that's never really been the reason this "lawsuit" was commenced. What motivates this "lawsuit" is nothing

but Plaintiff's profoundly corrupt and indefensible desire to discourage and suppress honest tax returns by filers who have actually read the law for themselves.

Finally, we will observe, mostly for forensic reasons, that the Magistrate's recommendation that Plaintiff's prayer for retroactive coercion be denied as moot is itself "moot", since Plaintiff has already dropped that prayer in the motion being addressed (see the proposed "Permanent Injunction" submitted with Plaintiff's "Motion for Summary Judgment".

CONCLUSION

The issues before the Court are issues of evidence, and of the law. Plaintiff has introduced no evidence whatsoever to support its phony contentions. Plaintiff's sole pretense in this regard is the testimony of Kim Halbrook. However, the assertions of Kim Halbrook are nothing more than attestations of having seen paperwork purporting to reflect the assertions of others as to the legal character of Peter Hendrickson's activities. She testifies that W-2s saying this and that were mailed to Plaintiff and to Defendants, but has no personal knowledge of the accuracy of "this and that". Her testimony is thus hearsay at best. Even were this not the case, Halbrook's testimony would not serve Plaintiff's needs. The "this and that" asserted on the W-2s involved has been explicitly and formally rebutted by Defendant Peter Hendrickson, whose personal knowledge of "this and that" is unquestionable, and whose testimony on the subject is given primacy by plain and explicit operation of law.

The rest of what Plaintiff presents is entirely dependent on Halbrook's inadequate assertions, and

is presented only to generate an illusion of substance, in which each part of the construct is alleged to be the foundation of each other part, with none of it actually resting on the ground anywhere. If Plaintiff were to offer the testimony of a witness claiming the moon was made of cheese (or, to model Halbrook's testimony more closely, claiming to have seen a report that the moon was made of cheese), and were to then supplement that testimony with affidavits from cheese experts as to just what kind of cheese it must be based on the moon's appearance or behavior, those affidavits would precisely match the significance of the affidavits of "Terry Grant" and Shauna Henline to the instant case. Unless and until it is established that the moon really IS made of cheese, that significance is... nothing.

In short, the only actual facts in evidence are Defendants' affidavits, both those in the form of tax return instruments and those introduced with filings in this case, and the Plaintiff's own certificates of assessment. All of these facts fully support Defendants' position, and fully defeat that of Plaintiff. Plaintiff cannot prevail on the facts no matter how they are construed.

Further, Plaintiff cannot prevail as a matter of law. Plaintiff is incapable of proving that it has any claim to Defendants' property, and Defendants have positively established by every mechanism provided by law that Plaintiff has no such claim. Plaintiff has acknowledged by means of its own documents that it has no such claim. Additionally, if almost superfluously under the circumstances, the law provides that Plaintiff can only assess and collect per the declarations on Defendants' return. Even if Plaintiff could contrive a convincing pretense of a

claim, it could not assess and collect it as a tax, in any event (a fact which underscores the fundamental jurisdictional illegitimacy of this suit).

Plaintiff also cannot prevail as a matter law in regard to its grotesque prayer for an injunction involving the dictation of the content of Defendants' tax return testimony by others, or so as to suit the preferences and interests of others. Not only would the resulting "testimony" be legally meaningless, but such an injunction would stand at odds with the statutes providing for the production and content of such returns (and possibly others as well, such as 18 USC § 1512(b)(1), which criminalizes any effort to use intimidation to influence the testimony of any person in any official proceeding, or which may eventually become a part of any official proceeding).

Finally, as previously observed, Plaintiff's motion is untimely. The Court has yet to rule on our motions to dismiss and for other relief, in light of which Plaintiff's motion seeks a judgment in a cause not yet verified as legitimate, and as to a complaint to which no answer has yet been made.

WHEREFORE

Defendants pray this Honorable Court to:

1. Reject the Magistrate's Report and Recommendation regarding Plaintiff's Motion for Summary Judgment, and deny that motion;

2. Grant Defendants' Motion to Dismiss For Lack Of Jurisdiction and For Failure To State A Claim Upon Which Relief Can Be Granted; and

3. Grant Defendants such other relief, including the costs of this action, as is just and equitable.

Dated this, the 22nd day of February, 2007

Respectfully submitted

_____

Peter Eric Hendrickson

_____

Doreen M. Hendrickson
232 Oriole Rd.
Commerce Twp, Michigan 48382
(248) 366-6858
Attachment: Affidavit of Peter E. Hendrickson

Affidavit

I am Peter E. Hendrickson, a man born, and presently living, in Michigan; older than the age of majority; and of sound mind.

I have personal knowledge of the facts set forth in this affidavit and I am competent to testify about them.

Upon information and belief, Kim Halbrook, witness for the Plaintiff in the civil action styled "United States Of America versus Peter Eric Hendrickson and Doreen M. Hendrickson", has no personal knowledge whatsoever regarding payments reported on Forms W-2 about which she has testified by affidavit in the instant action, and is merely attesting to having seen records about those payments, and to the contents thereof.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 19th day of February, 2007.

_____

Peter E. Hendrickson

JUDGMENT

The Court having reviewed the pleadings in this matter and being fully advised in the premises;

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiffs motion for summary judgment is GRANTED, and this case is DISMISSED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge
Dated: February 26, 2007

ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION [15]

This matter comes before the Court on the Magistrate Judge's February 5, 2007 Report and Recommendation [15]. Being fully advised in the premises and having reviewed the record and the pleadings, including Defendants' Objections, the Court hereby ACCEPTS and ADOPTS the Magistrate Judge's Report and Recommendation.

Defendants' motion to dismiss [4] is DENIED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds United States District Judge
Dated: February 26, 2007

ORDER ACCEPTING IN PART AND REJECTING IN PART MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION [17]

This matter comes before the Court on the Magistrate Judge's February 8, 2007 Report and Recommendation [17]. Being fully advised in the premises and having reviewed the record and the pleadings, including Defendants' Objections, the Court hereby ACCEPTS IN PART and REJECTS IN PART the Magistrate Judge's Report and Recommendation.

The Court REJECTS that part of the Report and Recommendation denying the government's request for an injunction requiring Defendants to file amended Form 1040 tax returns for tax years 2002 and 2003. The Magistrate Judge denied this request as moot, given that Defendants had already been ordered to return erroneously issued refunds for these two tax years. This position assumes, however, that Defendants' federal income tax withholdings on their 2002 and 2003 W-2s were equal to their eventual tax liability, which is not necessarily the case.

Therefore, the Court GRANTS the government's request for an injunction on this additional issue and hereby ACCEPTS and ADOPTS the remainder of the Magistrate Judge's Report and Recommendation. The government's motion for summary judgment [9] is GRANTED.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge
Dated: February 26, 2007

DEFENDANTS' MOTION FOR RECONSIDERATION

Defendants respectfully move the Court for a reconsideration of its rulings in the above-captioned matter. Plaintiff has utterly failed to carry its burden of proof as to any issue of fact relevant to the matter, and has thus failed to meet its obligation to establish the jurisdiction of the Court, as well as its obligation to substantiate the existence of a lawful claim or interest for which it can seek relief.

Plaintiff has failed to prove, or even to attempt to prove, that Defendants owe or owed Plaintiff anything. The existence of an obligation is not established by the mere making of an allegation, whether by a complaining party directly, or, as Plaintiff attempts in the instant case, by proxy-- even when the allegation (whatever its character) is made by way of an affidavit; this is particularly so when such allegations have been explicitly (or even implicitly) rebutted. Thus, Plaintiff lacks (and has lacked from the beginning) standing and statutory authorization to bring suit for any reason, and particularly under the auspices of the law reflected at 26 USC 7405.

It is Plaintiff's burden to lay out with specificity what activities are taxed under the income tax laws; and to prove that Defendants engaged in those activities, and to such a degree as to cause a tax liability to result. Plaintiff has not even attempted to meet either burden. Instead, Plaintiff has merely submitted one hearsay affidavit into evidence, which is (and has repeatedly been) explicitly rebutted by sworn testimony. Otherwise, Plaintiff has done nothing more than carry on ad nauseum with

completely irrelevant (and unsubstantiated, inflammatory and prejudicial) declarations of "fraud and falseness". Such declarations are irrelevant to Plaintiff's burden. Either Defendants are, and were, objectively liable for a tax, or they are, and were, not. Short of Defendants' sole ability to have made the question moot, nothing Defendants may or may not have done-- false, fraudulent, frivolous, whimsical or otherwise-- can affect, or can have affected, that objective reality in any way whatsoever. Nothing Defendants may or may not have done-- false, fraudulent, frivolous, whimsical or otherwise-- has relieved Plaintiff of its burden of proving its allegations that Defendants were, and are, objectively and actually liable for a tax relative to the years in question.

Furthermore, Plaintiff was actually obliged to meet this burden in its entirety within the body of its complaint, or lack standing to pursue the case to begin with. In the absence of pre-existing, definitive and conclusive determinations that Defendants had liabilities for the years in question, Plaintiff is barred from bringing suits such as the instant action. Congress has explicitly provided that an executed return such as the 1040s created by Defendants are dispositve instruments by which such determinations are made, precisely in order to prevent suits of this kind. It was obviously not the intention of Congress that this provision be thwarted by the simple mechanism of Plaintiff disputing such determinations, nor that the Court allow Defendants to be subjected to the ordeal of a lawsuit so as to furnish Plaintiff with an opportunity to attempt to creatively justify having done so.

Finally, the injunction sought by Plaintiff is plainly violative of the "necessary and proper" clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution, as well as various federal criminal statutes and the fundamental principles of due process. For these reasons and others, Plaintiff's Motion For Summary Judgment should be denied, and Defendants' Motions To Dismiss And For Other Relief should be granted. Otherwise, the Court should permit Defendants to answer Plaintiff's complaint so that the matter can proceed to a proper jury trial.

DISCUSSION

1. Plaintiff has rested its entire case on the existence, and supposed veracity, of certain "information returns" (W-2s and 1099s) on which it is alleged that payments of certain particular amounts AND of certain particular legal character were received by Defendants. That is, such "information returns" report an amount paid, AND allege that the reported amount is a measurement, and consequence, of taxable activity engaged in by the recipient.

> *"The income tax is, therefore, not a tax on income* [earnings] *as such. It is an excise tax with respect to certain activities and privileges which is measured by reference to the income which they produce. The income is not the subject of the tax: it is the basis for determining the amount of tax."*
>
> F. Morse Hubbard, Treasury Department legislative draftsman. House Congressional Record, March 27, 1943, page 2580.

Plaintiff has produced NO EVIDENCE OF ANY KIND which is not entirely based, and utterly dependent, upon the presumed correctness of these "information returns" in both respects; and has produced NO EVIDENCE OF ANY KIND which independently substantiates that correctness.

The only aspect of these "information returns" which has been credibly substantiated is the amount (not the legal character) of Defendant Peter Hendrickson's property diverted from him and put into the temporary keeping of Plaintiff during 2002 and 2003 which was also reported on the W-2s. The substantiation of that single aspect of the "information returns" upon which Plaintiff bases the entirety of its case, consists of the testimony of Defendant Peter Hendrickson on the Forms 4852 submitted with Defendants' tax returns-- which testimony simultaneously rebuts the assertions on those same W-2s as to the amount of taxable activity engaged in by Hendrickson during the periods involved (which activity, within the context of Forms W-2, is reported as the payment of "wages as defined in the law reflected at sections 3401(a) and 3121(a) of Title 26"). THUS, PLAINTIFF HAS NOT MET EVEN A HINT OF ITS BURDEN OF PROOF.

2. Because Plaintiff has not supported its case with any evidence, we are forced to suspect that the Court is basing its decisions in this matter on unstated presumptions. We respectfully submit that to do so is judicial error, for the following reasons, at least:

It is self-evident (and a simple matter of law) that not every payment made is a payment of "wages as defined at 3401(a) or 3121(a) of title 26", a payment of "gains profit and income" made in the

course of a "trade or business", or, speaking more generally, a payment made in connection with a taxable activity. It is not necessary at this time to go into what DO constitute such payments-- it is enough that some payments do not. Because this is so, the issue in the instant matter is one involving questions of fact as well as questions of law. Those pertaining to the law are exclusively of the character of, *"IF it were to be established as true that payments of a particular amount AND resulting from the conduct of particular activities were received by the Defendants, then the law says that such-and-such is the consequence"*. With all due respect, the Court CANNOT presume for ANY reason that such payments were received by the Defendants-- because there is explicit testimony in the record that they were not. Once challenged or rebutted, presumptions have no legal standing whatsoever as a matter of fundamental principle, and also as specified in the Federal Rules of Evidence:

> *Federal Rules of Evidence Rule 301.*
> *Presumptions in General Civil Actions and Proceedings*
> *In all civil actions and proceedings not otherwise provided for by Act of Congress or by these rules, a presumption imposes on the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.*

The mere existence of "information returns" asserting such payments is immaterial, because it is also self-evident that what is reported on "information returns" can be simply wrong. Even if Kim Halbrook, for instance, whose testimony as to having seen records alleging (or assumed by her to allege, or constitute) payments of "wages as defined in the law" to Defendant Peter Hendrickson is so integral to Plaintiff's presentation, really BELIEVES what she alleges to be true, she could be wrong, for many different reasons and in many different ways. Or she could be simply lying. In any event, she cannot be simply presumed to be knowledgeable, accurate or honest, particularly in the face of testimony explicitly disputing her assertions. Neither can any document be held to be self-validating in the face of testimony to the contrary, with one significant exception:

> *"And be it further enacted,...that any party, in his or her own behalf,...shall be permitted to declare, under oath or affirmation, the form and manner of which shall be prescribed by the Commissioner of Internal Revenue,... ...the amount of his or her annual income,... liable to be assessed,... and the same so declared* ***shall be received*** *as the sum upon which duties are to be assessed and collected." Section 93 of The Revenue Act of 1862 (Emphasis added)*

That the process specified in this statute remains intact and in force is illustrated by the following IRC and CFR sections:

26 USC § 6201

(a) Authority of Secretary

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

(3) Taxes shown on return

The Secretary shall assess all taxes determined by the taxpayer or by the Secretary as to which returns or lists are made under this title.

6 CFR 301.6203-1 Method of assessment.

...The amount of the assessment shall, in the case of a tax shown on a return by the taxpayer, be the amount so shown...

3. Aside from the United States Department of Treasury Certificates of Assessment establishing that the official position of Plaintiffs client agency is that no tax is or ever was paid in by Defendants, or is now, or ever was, owing to Plaintiff or its client in connection with the years 2002 and 2003 (due to which the legitimacy of any alleged authorization for the bringing of this action pursuant to the requirements expressed at 26 USC 7401 is gravely compromised, and the legitimacy of Plaintiff's standing to bring this action under 26 USC 7405 is demonstrably non-existent), no relevant evidence is in the record but the "information returns" discussed above (upon which all of Plaintiff's averments and

testimonials rest like a pyramid standing on its point) and Defendants' own filed documents. Therefore, we will also address the possibility that our own documents are being somehow construed as a basis for presumptions of fact in support of Plaintiff's claims, a construction which would be illegitimate for similar reasons to those given in the previous discussion of presumptions related to the existence and content of "information returns":

While the legal consequences of the making of any particular testimony, or the implications of the use of any particular forms or references thereto, may be "matters of law", the intent-- and therefore, the actual meaning, the actual legal character and the actual legal significance-- of such testimony, usage and/or references are purely matters of fact. As such they are matters of which we respectfully submit that the Court has no knowledge of its own; they are matters of which Plaintiff has no knowledge of its own; and they are matters regarding which Plaintiff has introduced no first-hand (and thus relevant) testimony. They are also matters regarding which WE HAVE first hand knowledge. We have made clear through the affidavits accompanying our various filings in the case so far, as well as by our return instruments themselves, honestly read, that our intentions in the making of our return testimony, and the use of, or reference to, any forms in the course of or in connection with that testimony is to explicitly rebut Plaintiff's claims, and the basis upon which Plaintiff purports to make such claims. Thus, no adverse presumptions can be legitimately sustained based on that testimony or usage.

Furthermore, the purely legal implications of completing and submitting tax return documents do

not support presumptions adverse to Defendants and favorable to Plaintiff. In addition to the provisions of law cited earlier in our discussion of the self-validating and legally dispositive character of an executed return, we are instructed by the following:

> *26 CFR Sec. 301.6402-3 Special rules applicable to income tax.*
> *(a) In the case of a claim for credit or refund filed after June 30, 1976--*
> *(1) In general, in the case of an overpayment of income taxes, a claim for credit or refund of such overpayment shall be made on the appropriate income tax return.*
>
> *"Even if you do not otherwise have to file a return, you should file one to get a refund of any Federal income tax withheld."*
> From the instructions for the 2002 Form 1040
>
> Senator Danaher: "*Of course, you withhold not only from taxpayers but nontaxpayers.*"
> Mr. Hardy: "*Yes.*"
> ...
> Senator Danaher: "*I have only one other thought on that point. In the event of withholding from the owner of stock and no taxes due ultimately, where does he get his refund?*"
> Mr. Friedman: "*You're thinking of a corporation or an individual?*"
> Senator Danaher: "*I am talking about an individual.*"
> Mr. Friedman: "*An individual will file an income tax return, and that income tax return will constitute an automatic claim for refund."*

> From a hearing before a subcommittee of the committee on finance, United States Senate, during the 77th Congress, Second Session on withholding provisions of the 1942 Revenue Act on August 21 and 22, 1942. Connecticut Republican Senator John A. Danaher and testifying witnesses Charles O. Hardy of the Brookings Institution and Milton Friedman of the Treasury Department Division of Tax Research.

In any event, the tax arises from engaging in taxable activities, and nothing else. It does not arise from the use or completion of certain forms, whether returns, or any other variety of form, document or instrument, and whether used or completed by Defendants, or anyone else; nor can the conduct of such activities be presumed from the use or completion of any form, in the face of explicit testimony to the contrary.

4. Regarding Plaintiff's requests for an injunction and coerced testimony and the Court's related decisions, it is self-evident that to dictate what cannot be said is to dictate what must be said, or to impose silence. It is not necessary to discuss Plaintiff's calculated mischaracterizations of what is said in Defendant Peter Hendrickson's book or Plaintiff's pretensions in suggesting that it possesses some mystic knowledge about the underlying meaning of our tax return testimony in order to observe that neither Plaintiff, nor anyone else on Earth, has the lawful authority to dictate the content of our testimony, or to impose silence, in the face of allegations concerning us, such as those on the

"information returns" made so much of by Plaintiff in this case.

To whatever degree the statutes invoked or relied upon by Plaintiff and the Court can be construed to provide for such an injunction and coercion of testimony those statutes are unconstitutional, being plainly violative of at least the "necessary and proper" clause of the eighth section of Article One, and the First, Fifth, Seventh, Ninth, and Tenth Articles of Amendment to the U.S. Constitution. Such efforts to dictate or control testimony also violate various federal criminal statutes regarding witness tampering and intimidation, as well as the fundamental principles of due process.

The very fact that Plaintiff has sought such an injunction, and a coerced change in testimony we have already made, is a plain acknowledgment that Plaintiff has no legal basis for disputing the freely-made testimony on our returns. The same plain truth is revealed by Plaintiff's inability to carry its burden of proof throughout this contest, and its failure to even try to do so. Plaintiff CANNOT substantiate the allegations made on the "information returns" upon which it relies, and therefore seeks to prevent those allegations from being rebutted.

CONCLUSION

At no point in these proceedings, from the complaint itself to the present, has Plaintiff carried its burden of proof. Plaintiff had no statutory authority to bring this suit, and, in fact, violated several statutes in doing so.

Plaintiff has, and has had, no legitimate,

substantiated complaint to prosecute. It has demonstrated none in any of its voluminous filings, and has not even made a meaningful effort to substantiate the legitimacy of what it purports to be its complaint.

Plaintiff has sought "relief" which is abhorrent to the Constitution under the sole authority of which it exists at all, and has done so for the deliberate purpose of evading both provisions of that fundamental law, and numerous plain and proper enactments of Congress. Indeed, in every regard, Plaintiff's action has been brought for grossly improper purposes.

Every aspect of Plaintiff's presentments in this action-- its deliberate, repeated effort to dissemble as to the content of Defendant Peter Hendrickson's book, its side-stepping of every substantive element of it's assertions that Defendants owe or owed any tax, its calculated efforts to obscure the real issues in this matter with an endless clutter of irrelevancies, and the lawless relief it has sought-- serves to demonstrate that the real nature of this action is an attempt by Plaintiff to protect a lie, and to suppress or neutralize a truth to which it has no other answer. It is therefore no surprise that Plaintiff has failed to prove its case.

WHEREFORE

We pray this Court reconsider its prior decisions in this matter and:

1. FIND that Plaintiff has failed to meet its burden of proof, DENY Plaintiff's motions, and GRANT Defendants' previously filed Motion To Dismiss and such other relief as the Court finds

appropriate;

or,

2. DENY Plaintiff's Motions, GRANT Defendants' previous Motions For More Definite Statement, To Strike, and giving Notice of Violation Of FRCP Rule 11 insofar as the Court sees fit, permit Defendants to answer the complaint, and allow this matter to proceed to a proper jury trial.

Dated this the 12th day of March, 2007

Respectfully submitted

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Peter Eric Hendrickson

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MOTION FOR RELIEF FROM JUDGMENT

Now come the Defendants, Peter Eric and Doreen M. Hendrickson, and move this Court for an order granting them relief from the Judgment dated February 26, 2007. This motion is made pursuant to Rule 60(b)(4) and (6). Support for this motion is set forth in the Memorandum below.

MEMORANDUM

A. Introduction.

Civil Rule 60 (b) of the Federal Rules of Civil procedure (FRCP) provides that "On motion and upon such terms as are just, the court may relieve a party ... from a final judgment, order , or proceeding for the following reasons." Defendants believe they are entitled to relief pursuant to subsections "(4) the judgment is void;" and (6) any other reason justifying relief from the operation of the judgment." Defendants' belief is based on the fact that this Court had no jurisdiction to grant the relief the Plaintiff requested in its complaint.

The Plaintiff filed suit on April 11, 2006 seeking, among other things, the recovery of alleged "erroneous refunds" of federal taxes for the years 2002 and 2003. The basis for characterizing the refunds as "erroneous" is the allegation that the tax returns filed by the Hendricksons are "false and fraudulent", and a subsequent assumption that the amount of the refund was erroneous. That assumption is illogical and erroneous, but in any event is not a matter properly within the jurisdiction of the District Court. Through filing its complaint and making the erroneous assumption that the amount of the refund, as alleged in the complaint, is an "erroneous refund" the Plaintiff is attempting to by-pass a clearly mandated responsibility which Congress explicitly delegated to the Secretary of the Treasury and to transfer that responsibility to the District Court. Congress gave the IRS specifically delineated collection authority, and the IRS must act within that authority. The Court has no jurisdiction and is powerless to do what Congress has clearly delegated to the Secretary of the Treasury.

B. Congressional Statutory Scheme.

1. Alternative methods of Collecting "Erroneous" Refunds.

When the IRS actually makes an "erroneous" refund it has the option of seeking recovery through two methods provided by Congress. It can initiate an "erroneous refund" suit under 26 U.S.C. §7405 for refunds of amounts assessed and paid in as tax under the specifications reflected in that code section; or it can go through the assessment process and eventual collection procedures under the Code, see *United States v. Frontone*, 383 F.3d 656, 661 (7th Cir. 2004) in other cases. But there are some limitations and qualifications for these procedures.

In order to understand why the District Court did not have jurisdiction to entertain this alleged "erroneous refund" suit, it is necessary to understand the nature of an "erroneous" refund and how it does not apply to the refunds given to the Hendricksons. But before this, a somewhat detailed examination of the statutory procedures given by Congress to the IRS to collect taxes is in order as they apply to the Hendricksons.

2. Assessment Process.

The process begins when a taxpayer files a return. The Hendricksons filed their returns timely within the first extension time limits. Under 26 U.S.C. §6151, when a person files a tax return on the date it is required, he is required to pay the tax shown on his return on the same date without the need of an agency assessment, as the person essentially self-assesses. The issue of payment with the filing did not apply to the Hendricksons because there was no tax

shown as due on their returns. While no taxes were due, there had been certain funds withheld and deposited on the Hendricksons' behalf pending the determination of a tax liability. Accordingly, the withheld funds were either refunded to them or credited to other tax years.

The IRS claims that the returns filed by the Hendricksons were "false and fraudulent". When such a claim is validly and properly made the procedure the IRS is to follow is found in 26 U.S.C. §6020(b).

§6020(b) authorizes the Secretary to make a return from his own knowledge and from such information as he can obtain through testimony or otherwise, if any person "fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefore, or makes, willfully or otherwise, a false or fraudulent return." The status of such a return is stated in subsection (b)(2), i.e. "Any return so made and subscribed by the Secretary shall be *prima facie* good and sufficient for all legal purposes." The process under §6020(b) is how the Secretary makes a determination that a taxpayer may have a deficiency.

When there IS a fraudulent return, as claimed here, and the Secretary claims that taxes are owed, the assessment process under Chapter 63 of the Code is required to be followed, 26 U.S.C. §6201 *et seq*. Pursuant to this process the Secretary must first determine there is a deficiency, which is the amount determined by the Secretary through the procedures in §6020(b). A deficiency, in simple terminology, is defined in 26 U.S.C. §6211(a) as the amount of tax imposed by Title 26 which exceeds the sum of the amount shown on the taxpayers' return, plus any previously assessed amounts, less any rebates. That

the IRS is required to determine the deficiency is confirmed by the Supreme Court in *Spies v. United States,* 317 U.S. 492, 495 (1943). The Supreme Court used the language of §271 of the 1939 Code which defined a tax deficiency. §271 is the forerunner of the current §6211 representation of the statutory definition of a tax deficiency. The Court simply defined deficiencies as "additions to the tax upon determinations of fact made by an administrative agency."

Once the Secretary (the IRS as an administrative agency) makes a determination that there is a tax deficiency he is then authorized under §6201 to make an assessment. 26 U.S.C. §6201 gives the assessment authority of the IRS as follows:

> "The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:
> (1) Taxes shown on return
> The Secretary shall assess all taxes determined by the taxpayer or ***by the Secretary*** as to which returns or lists are made under this title." (Emphasis added)

§6201(e) gives further direction. Section 201(e) states,

> "(e) Deficiency proceedings

> For special rules applicable to deficiencies of income, estate, gift, and certain excise taxes, see subchapter B."

Subchapter B begins with section 6211 and sets forth the procedures the Secretary must follow after there is a determination of a deficiency. Those procedures are set forth in Subchapter B of Chapter 63, i.e. section 6211 through 6225.

After the Secretary has determined there is a deficiency by means of the subscribed return created under 26 U.S.C. §6020(b) due to the allegedly fraudulent nature of the original return filed, the Secretary is then authorized to issue and send a Notice of Deficiency to the alleged debtor. The Notice of Deficiency is also called a '90 day letter,' because once a valid Notice of Deficiency is issued 26 U.S.C. §6213 mandates that when someone is sent a Notice of Deficiency he has 90 days, or 150 if outside the United States, to file a petition with the Tax Court for a redetermination of the alleged deficiency.

Through this process Congress intended that a valid Notice of Deficiency must be issued and served before the Tax Court has jurisdiction to rule on the IRS alleged deficiencies. Only the Tax Court has this jurisdiction when the tax has not been paid. Pursuant to 26 U.S.C. §6212(a) the IRS must issue a valid notice of deficiency before the Tax Court can gain jurisdiction. See *Hempel v. United States*, 14 F.3d 522 (11th Cir. 1994) (holding that the Notice of Deficiency is the jurisdictional ticket to Tax Court). See also *Sealy Power v. Commissioner*, 46 F.3d 382 (5th Cir, 1995) ("Tax Court only has jurisdiction when the Commissioner issues a valid notice and the taxpayer files a petition for redetermination").

Thus, Congress created the United States Tax Court "to provide taxpayers with a means of challenging deficiencies made by the Commissioner without first having to pay the alleged deficiency. Without such a forum, taxpayers would have to pay the asserted deficiency and then initiate a suit in federal district court for a refund." *Samuels, Kramer & Co. v. Commissioner,* 930 F.2d 975, 979 (2nd Cir. 1991). As an Article I court, the Tax Court is a court of "strictly limited jurisdiction." *Kelley v. Commissioner*, 45 F.3d 348, 351 (9th Cir. 1995). A notice of deficiency issued by the IRS pursuant to §6212 is the jurisdictional "ticket to the Tax Court." *Bokum v. Commissioner*, 992 F.2d 1136, 1139 (11th Cir. 1993) (quoting *Stoecklin v. Commissioner*, 865 F.2d 1221, 1224 (11th Cir. 1989)); *Spector v. Commissioner*, 790 F.2d 51, 52 (8th Cir. 1986) (citing *Laing v. United States*, 423 U.S. 161, 165 n.4 (1976)), and holding that "the determination of a deficiency and the issue of a notice of deficiency is an absolute precondition to tax court jurisdiction").

An assessment will eventually result, either because the recipient of the Notice of Deficiency fails to petition the Tax Court, or as a result of the Tax Court's resolution of the matter. In either event, pursuant to §6155, the Secretary is then required to send a Notice and Demand for any tax due. In other words, any tax properly determined to be owing is not due until the Notice and Demand is sent. In this case, since the Hendricksons determined that no tax is owing, no tax is due unless and until a statutorily valid alternative assessment process-- which results in a proper and valid determination of a different amount of tax owed-- is undertaken and completed, and the Notice and Demand is sent.

In a nutshell, the statutory authority for the Tax Court to have jurisdiction to adjudicate the validity of a tax deficiency determined by the IRS requires a valid Notice of Deficiency being issued pursuant to statutory guidelines. Without a valid Notice of Deficiency the Tax Court lacks jurisdiction.

C. Application to The Instant Case.

The Hendricksons determined that no tax was due on their return. The Plaintiff has not determined that a tax is due. Pursuant to the IR Code, until the administrative deficiency process has been completed and a Notice and Demand has been sent to the Hendricksons after a valid assessment has been made, no tax is owed. Thus, the Hendricksons have no tax liability.

Furthermore, it is entirely possible, even assuming *arguendo* the Hendricksons DID file fraudulent returns, that the refund may STILL not necessarily be erroneous. Had the Secretary followed the proper deficiency procedures, due to various deductions and exemptions, the refund may have been entirely proper or only partially correct. In any event, until an administrative agency determination has been made as to what part, if any, of the refund is an erroneous refund of a tax liability there is no possible method by which a District Court can exercise jurisdiction to determine a deficiency and assess a tax liability which Congress has reserved as a responsibility of the Secretary.

D. Conclusion.

The allegations of erroneous refunds made by the Plaintiff in the complaint are nothing more that rhetoric based on assumptions of a tax liability. The

tax liability of the Hendricksons has never been determined, except through their own self-assessment. There has been no administrative determination that the Hendricksons DO have a tax liability due and owing through the deficiency and assessment procedures delineated in the IR Code and delegated to the Secretary, and this Court has no jurisdiction to assume the administrative functions of the IRS. Accordingly, Defendants respectfully request the Court dismiss this case for lack of jurisdiction and grant relief from the judgment pursuant to Civil Rule 60(b)(4) and (6).

Dated this 12th Day of March, 2007.

Respectfully submitted

_____

Peter Eric Hendrickson

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